

## Missouri Attorney General's Opinions - 1979

Opinion	Date	Topic	Summary
<a href="#">1-79</a>	Sept 21	COUNTIES. COUNTY COURT. HIGHWAY PATROL.	The county court of a third class county may, under certain circumstances, lease space in the county courthouse for a proper charge to an auto license fee agent, or to the Social Security Administration and may provide free space to the State Highway Patrol.
<a href="#">2-79</a>	Mar 1		Opinion Letter to The Honorable Truman Wilson
<a href="#">5-79</a>	June 27	CHILD SUPPORT. COURT COSTS. PROSECUTING ATTORNEY.	Prosecuting attorneys are not required to pay court filing fees in civil actions to enforce or collect child support obligations for persons referred to their offices by the Division of Family Services of the Department of Social Services either in Aid to Families with Dependent Children (AFDC) cases in which assignment of support rights has been made to the Division in behalf of the state or non-AFDC cases wherein there is no such assignment under Section 207.025, House Bill No. 1634, 79th General Assembly.
<a href="#">8-79</a>	Feb 8		Opinion Letter to The Honorable Phillip M. Barry
<a href="#">9-79</a>	Sept 27	CITIES, TOWNS, AND VILLAGES. CONSTITUTIONAL LAW.	A third class city does not have authority to provide free space to a chamber of commerce or a state license fee agent. A third class city does not have authority to rent an office to a state license fee agent at less than a reasonable rent, and such a city does not have authority to donate money to private not-for-profit corporations.
<a href="#">15-79</a>	Apr 4		Opinion Letter to Mr. David R. Freeman
<a href="#">16-79</a>	Jan 25	PENSIONS. PUBLIC SCHOOL RETIREMENT SYSTEM. ST. LOUIS CITY SCHOOL RETIREMENT SYSTEM.	Sections 169.410 through 169.540 of the Revised Statutes of Missouri, as amended, do not allow the Board of Trustees of the Public School Retirement System of the City of St. Louis to establish a life insurance program for its active members and/or retirees.
<a href="#">18-79</a>	Feb 22	ATHLETIC COMMISSION.	The Office of Athletics cannot define boxing, sparring, or wrestling by rule or regulation to include full contact karate.
<a href="#">20-79</a>	Dec 21	AMBULANCES. DIVISION OF HEALTH. REORGANIZATION ACT.	The State Board of Health has authority to determine policy for the Division of Health.
21-79			Withdrawn

<a href="#">23-79</a>	May 18		Opinion Letter to The Honorable Charles J. Becker
<a href="#">25-79</a>	Amended Aug 21, 1980		Opinion Letter to The Honorable James Antonio
<a href="#">26-79</a>	Mar 30		Opinion Letter to The Honorable James Antonio
<a href="#">27-79</a>	Feb 20		Opinion Letter to The Honorable Dale K. Miller
<a href="#">29-79</a>	Mar 5		Opinion Letter to The Honorable Hardin C. Cox
<a href="#">30-79</a>	Sept 24	ACCOUNTANTS.	Government employees doing “accounting work” which does not rise to the level of activity governed by Chapter 326, RSMo 1978, are not engaged in the “practice of public accounting” as that term is used in Section 326.210, RSMo 1978.
<a href="#">31-79</a>	Jan 10	SCHOOLS. FEDERAL AID. CONSTITUTIONAL LAW.	(1) Federal funds paid directly to the Board of Education of the City of St. Louis under the provisions of the Emergency School Aid Act (ESAA) constitute public funds which are subject to the spending proscriptions of the Missouri Constitution.  (2) The Missouri Constitution prohibits the use of public school personnel paid with ESAA funds to provide teaching services to children attending sectarian schools on the premises of the sectarian schools during the regular school day.
<a href="#">33-79</a>	Mar 15		Opinion Letter to The Honorable Edward E. Ottinger
<a href="#">35-79</a>	May 16		Opinion Letter to The Honorable Philip R. Pruett
<a href="#">36-79</a>	Jan 26		Opinion Letter to Mr. Edwin M. Bode
<a href="#">37-79</a>	Jan 17	LIQUOR.	Opinion Letter to The Honorable Philip R. Pruett
<a href="#">38-79</a>	June 5	SOCIAL SECURITY. COOPERATIVE AGREEMENTS. OFFICE OF ADMINISTRATION.	Joint boards created by cooperative agreements of political subdivisions under § 70.260, RSMo, may, depending on the agreement, come within the definition of “instrumentality” for the purpose of social security reporting of the employees of such joint boards under §§ 105.300, RSMo, et seq.
<a href="#">40-79</a>	Jan 24		Opinion Letter to The Honorable Frank Bild
<a href="#">43-79</a>	Jan 17	CONFLICT OF INTEREST. COORDINATING BOARD FOR HIGHER EDUCATION.	A person cannot serve simultaneously as a trustee of a private college in Missouri and as a member of the State Coordinating Board for Higher Education.
44-79			Withdrawn
<a href="#">_____</a>			



<a href="#">45-79</a>	Mar 5		Opinion Letter to The Honorable Vic Downing
<a href="#">46-79</a>	Dec 26		Opinion Letter to Mr. F. M. Wilson
<a href="#">48-79</a>	Dec 6		Opinion Letter to The Honorable Hardin C. Cox
<a href="#">49-79</a>	Aug 27	COMPENSATION. OFFICE OF ADMINISTRATION. LABOR AND INDUSTRIAL COMMISSION.	Total compensation of the members of the Labor and Industrial Relations Commission is \$28,000 per annum.
<a href="#">50-79</a>	Jan 26		Opinion Letter to Mr. Fred A. Lafser, Jr.
<a href="#">51-79</a>	Jan 12	JUDGES.	A person who is otherwise eligible and has not waived his retirement benefits under the judicial retirement provisions of Sections 476.515 to 476.570, V.A.M.S., who no longer serves as a judge may elect not to receive retirement benefits, may practice law and if otherwise eligible, may elect to receive his retirement benefits after he ceases the practice of law.
<a href="#">53-79</a>	Jan 26	CLEAN WATER COMMISSION.	The point source discharges of pollutants from federal facilities within the State of Missouri are subject to the same NPDES program requirements as are any other point source discharges of pollutants subject to the Missouri Clean Water Law and the regulations adopted pursuant thereto.
<a href="#">55-79</a>	Feb 5		Opinion Letter to Mr. Stephen C. Bradford
<a href="#">56-79</a>	Mar 30		Opinion Letter to The Honorable Flavel J. Butts
<a href="#">57-79</a>	Feb 7		Opinion Letter to The Honorable Larry E. Mead
<a href="#">58-79</a>	Mar 14	COOPERATIVE AGREEMENTS. DISASTER PLANNING. CIVIL DEFENSE.	That irrespective of number or contiguity, counties may, by county court order duly made and entered, participate in cooperative agreements under Article VI, Section 16, Missouri Constitution and Sections 70.210, <u>et seq.</u> , RSMo, respecting the establishment of a common disaster planning program required by Section 44.080, RSMo, and may share the cost of the disaster planning office, director and staff thus established.
<a href="#">59-79</a>	Nov 14	MENTAL HEALTH.	Emergency mental health coordinators may not be held civilly or criminally liable for requesting or authorizing emergency involuntary civil commitments pursuant to their authority under § 202.123.3, S.B. 423, 80th Gen. Assembly provided that such commitment was performed in good faith and without gross negligence.
<a href="#">60-79</a>	Feb 8		Opinion Letter to Dr. Arthur L. Mallory
<a href="#">61-79</a>			

<a href="#">61-79</a>	Feb 20	MENTAL HEALTH. APPROPRIATIONS.	The Department of Mental Health is headed by the Director of the Department and the legislature cannot appropriate money to the Mental Health Commission for the Commission to allocate to various facilities of the Department of Mental Health.
<a href="#">62-79</a>	May 3	JUDGES. COMPENSATION.	Probate ex officio magistrate judges in counties of the second class with populations of less than thirty thousand were, on January 1, 1979, entitled to the compensation provided by law for such probate judges under the provision of subsection (3) of Section 481.205, as amended by S.B. No. 950, 79th General Assembly, 2nd Regular Session, relative to second class counties having a population of less than sixty-five thousand in the sum of thirty-two thousand eight hundred dollars; and that additional magistrates in such counties were entitled to payment pursuant to subsection (3) of Section 482.150, as amended by House Bill No. 521, 79th General Assembly, 1st Regular Session, in the sum of thirty-two thousand nine hundred dollars. On and after January 2, 1979, such probate ex officio magistrate judges and additional magistrate judges became associate circuit judges entitled to the same compensation provided when they were probate ex officio magistrate judges and additional magistrate judges prior to January 2, 1979. That is, the salary of probate ex officio magistrate judges in second class counties of less than thirty thousand population who became associate circuit judges January 2, 1979, is thirty-two thousand eight hundred dollars. The salary of additional magistrate judges who became associate circuit judges January 2, 1979, in such counties is thirty-two thousand nine hundred dollars.
<a href="#">63-79</a>	Sept 26		Opinion Letter to The Honorable Kenneth W. Shrum
<a href="#">65-79</a>	Feb 6		Opinion Letter to The Honorable Nelson B. Tinnin
<a href="#">66-79</a>	Aug 8	CITIES, TOWNS, AND VILLAGES. PUBLIC HOUSING AUTHORITY.	A public housing authority may act in the capacity of a "parent entity," as that term is defined in 24 C.F.R. § 811.102, and is empowered to designate a not-for-profit corporation as its agency or instrumentality in the issuance of tax exempt obligations, the proceeds of which would be applied to the construction of low income housing subsidized by the United States Department of Housing and Urban Development under the provisions of Section 8 of the United States Housing Act of 1937, as amended.
<a href="#">67-79</a>	May 9		Opinion Letter to Mr. Stephen C. Bradford
<a href="#">68-79</a>	June 7	COMPENSATION. CIRCUIT CLERKS.	The compensation provided for circuit clerks is set out in Section 483.083 of House Bill 1634 of the 79th General Assembly and is effective beginning with the January 1, 1979, term of such incumbents.

<a href="#">70-79</a>	Aug 27	DEPARTMENT OF MENTAL HEALTH. HANDICAPPED CHILDREN.	The Department of Mental Health does not have the authority to place patients out of the State.
<a href="#">73-79</a>	Apr 5	SCHOOLS. SUNSHINE LAW.	A meeting of a board of education and its superintendent held to receive an oral report from him concerning ongoing business is subject to the sunshine law.
<a href="#">74-79</a>	Feb 22		Opinion Letter to The Honorable David C. Christian
<a href="#">75-79</a>	Aug 1		Opinion Letter to The Honorable Wesley A. Miller
<a href="#">76-79</a>	May 7	SCHOOLS. CONSTITUTIONAL LAW.	Public junior colleges in Missouri may belong to the Missouri Association of Community Junior Colleges and expend junior college district funds to support that organization through membership dues and other fees. It is further our opinion that school districts in Missouri may belong to the Missouri State High School Activities Association and expend district funds to support that association through membership dues and other fees.
<a href="#">77-79</a>	July 2	COMPENSATION. COUNTY TREASURER. COUNTY OFFICERS. OFFICERS.	The county treasurers of Pettis and Platte Counties, second class counties, are entitled to the compensation provided by Section 54.250, RSMo Supp. 1975, twelve thousand dollars per annum, and not to the compensation provided by Section 54.250 of House Bills Nos. 1121 & 1257 of the 79th General Assembly until the end of their terms, December 31, 1980. Further, such treasurers are entitled to the compensation provided under Section 54.251 of House Bills Nos. 1121 & 1257 of the 79th General Assembly in the amount of three thousand dollars per annum effective August 13, 1978, until January 1, 1981.
<a href="#">79-79</a>	July 31	DENTISTS. CORPORATIONS.	A person or entity other than a dentist duly registered and currently licensed by the State of Missouri cannot own any interest in a corporation organized for the purpose of engaging in the practice of dentistry and a Chapter 351, RSMo, (General and Business) corporation cannot be lawfully established for the purpose of engaging in the practice of dentistry.
<a href="#">80-79</a>	Mar 28		Opinion Letter to Mr. F. M. Wilson
<a href="#">82-79</a>	Mar 26		Opinion Letter to The Honorable John T. Russell
<a href="#">83-79</a>	Sept 5		Opinion Letter to The Honorable Ron Bockenkamp and Beverley Wilson, M.D.
<a href="#">85-79</a>	May 14	ARRESTS. CRIMINAL LAW. CRIMINAL	State capitol guards and watchmen employed and commissioned in accordance with Section 8.035, RSMo Supp. 1975, have the authority to make arrests in the buildings and on the grounds at the seat of

		PROCEDURE.	government of the state of Missouri; that the prosecuting attorney of Cole County has the authority to prosecute such violations in the circuit court of Cole County; and that the guards and watchmen who are regularly employed in a workweek for 32 hours or more and commissioned after December 31, 1978, in accordance with Section 8.035 must meet the minimum police training standards under Sections 590.100 through 590.150, V.A.M.S.
<a href="#">87-79</a>	Mar 28	PROSECUTING ATTORNEYS. COMPENSATION.	The annual salary of the prosecuting attorney of Cole County, Missouri, is twenty-one thousand dollars pursuant to the provisions of Section 56.270, House Bill Nos. 1121 & 1257, Second Regular Session, 79th General Assembly.
<a href="#">88-79</a>	Oct 2		Opinion Letter to The Honorable Edwin L. Dirck
<a href="#">89-79</a>	May 10	SCHOOLS.	The extension of city limits in a second class county automatically extends the school district boundary lines of such city, regardless of the fact that the county becomes a first class county prior to the effective date of the extension.
<a href="#">90-79</a>	Apr 20		Opinion Letter to Mr. Gerald H. Goldberg
<a href="#">92-79</a>	Aug 13	SCHOOL. TEACHERS.	The phrase “employed in any other school system as a full-time teacher for two or more years . . .” in Section 168.104(5), RSMo 1978, is clear and unambiguous and requires that only teaching experience gained in a school system other than the one in which a teacher is presently employed is the basis for waiving one year of the teacher's probationary period.
<a href="#">93-79</a>	May 21		Opinion Letter to The Honorable John T. Russell
<a href="#">94-79</a>	July 27		Opinion Letter to The Honorable James C. Kirkpatrick
<a href="#">95-79</a>	Mar 27		Opinion Letter to The Honorable James Mathewson
<a href="#">97-79</a>	Aug 28	BONDS. SHERIFFS.	A county court, of a third class county, may not expend public funds to reimburse a bonding company for payments made on a sheriff's official bond.
<a href="#">99-79</a>	July 10	COURTS. CIRCUIT COURTS. COMPENSATION. COUNTY COURT.	The county court is not required to expend county funds for the salary of a clerk for the associate circuit judge where there is no demonstrated factual need for such additional clerk to be paid at the cost of the county.
<a href="#">100-79</a>	Dec 19		Opinion Letter to The Honorable James Antonio
<a href="#">101-79</a>	July 18	SCHOOLS.	In determining the annual adjustment provided for in § 163.031.5, all districts in the lowest 5% should be included in the computation, without regard to whether they experience an increase or decrease in the amount per eligible pupil from the preceding year.

<a href="#"><u>103-79</u></a>	Aug 9	SCHOOLS. TEACHERS.	Permanent teachers promoted to positions of curriculum coordinator or departmental chairperson retain their tenure as permanent teachers while they hold the curriculum consultant or departmental chairperson positions, as long as their primary duties remain teaching. Permanent teachers promoted to positions which are supervisory in nature lose their tenure while employed in the supervisory position and may regain their tenure only after they are reemployed as teachers in the same school district for two consecutive years.
<a href="#"><u>104-79</u></a>	June 27		Opinion Letter to The Honorable Clifford W. Gannon
<a href="#"><u>106-79</u></a>	May 17	EXPENSES. COMPENSATION. HIGHWAY PATROL.	Travel expenses reimbursed to Missouri State Highway Patrolmen under Section 43.110, RSMo 1969, do not constitute payment of salary under Section 43.070, Senate Bill 763, 79th General Assembly, and such reimbursements are not in violation of the maximum salary limits established in Section 43.070.
<a href="#"><u>107-79</u></a>	Aug 3	DEPT. OF TRANSPORTATION. STATE EMPLOYEES.	Director of the Department of Transportation is subject to the control of the Transportation Commission which, under the Missouri Constitution, is vested with the authority to administer the Department of Transportation. The commission has the power to appoint, promote, demote, suspend and dismiss employees of the department.
<a href="#"><u>108-79</u></a>	Apr 24		Opinion Letter to The Honorable Charles J. Becker
<a href="#"><u>112-79</u></a>	May 17		Opinion Letter to The Honorable Joseph Frappier
<a href="#"><u>113-79</u></a>	May 18		Opinion Letter to Dr. Arthur L. Mallory
<a href="#"><u>114-79</u></a>	June 22		Opinion Letter to Dr. Arthur L. Mallory
<a href="#"><u>115-79</u></a>	May 3		Opinion Letter to The Honorable Gary G. Sprick
<a href="#"><u>118-79</u></a>	June 8	CARL. LICENSES. PSYCHOLOGISTS.	Department of Consumer Affairs, Regulation and Licensing, is not authorized to promulgate a rule allowing the department, upon the advice of the State Committee of Psychologists to grant an applicant for licensure a temporary license to practice psychology in the State of Missouri.
<a href="#"><u>119-79</u></a>	May 16		Opinion Letter to The Honorable Hardin C. Cox and The Honorable Harold Caskey
<a href="#"><u>120-79</u></a>	May 25		Opinion Letter to The Honorable Theodore L. Johnson, III.
<a href="#"><u>122-79</u></a>	July 5		Opinion Letter to Mr. Gary E. Stevenson
<a href="#"><u>123-79</u></a>	Aug 1		Opinion Letter to The Honorable Harriett Woods
124-79			Withdrawn

<a href="#">127-79</a>	June 15		Opinion Letter to The Honorable Ronnie DePasco
<a href="#">129-79</a>	June 1	TAXATION (Roads and Bridges). TOWNSHIPS. ROADS AND BRIDGES.	Township board of directors in a county under township organization is authorized to levy a road and bridge tax of fifty cents on each hundred dollars assessed valuation without a vote of the residents of the township or the residents of the county under the provisions of Section 12(a) of Art. X, Missouri Constitution.
<a href="#">131-79</a>	Nov 8	BANKS.	Under the contract and the arrangement presently existing in connection with the ultra machines, as described in the facts set out above, the use of such machines does not constitute branch banking. This office defers any judgment as to the use of the machine for the transfer of money from a customer's checking account to his savings account until that matter is resolved in the appropriate forum. We recommend, however, that that function be eliminated from the machine until such time as the issues concerning that function have been fully and properly resolved. Further, we do not offer an opinion concerning interstate use of the ultra machine.
<a href="#">132-79</a>	July 18	LIQUOR. LICENSES.	Ethanol used solely as a fuel for motor vehicles is not an "intoxicating liquor" as defined in § 311.020, RSMo 1978. It is our further opinion that individuals who manufacture ethanol on their own land solely for the purpose of providing fuel for motor vehicles are not required to be licensed and regulated under Chapter 311, RSMo as long as the alcohol produced at the facility is denatured by some means.
<a href="#">133-79</a>	May 29		Opinion Letter to The Honorable David A. Schwartz
<a href="#">135-79</a>	June 6		Opinion Letter to Dr. Arthur L. Mallory
<a href="#">137-79</a>	Sept 6		Opinion Letter to The Honorable George P. Dames
<a href="#">138-79</a>	July 2	OFFICERS. STATE OFFICERS. CONSTITUTIONAL LAW.	A member of the Commission on Atomic Energy, who was appointed by former Governor Christopher S. Bond with the advice and consent of the Senate to serve at the pleasure of the governor pursuant to § 18.010, RSMo, who has not been removed from office, serves for an indefinite period of time, beyond the expiration of Governor Bond's term, and at the pleasure of Governor Joseph P. Teasdale.
<a href="#">139-79</a>	June 28		Opinion Letter to The Honorable Emory Melton
<a href="#">140-79</a>	Oct 17	COURT COSTS. CRIMINAL COSTS. CRIMINAL PROCEDURE.	Section 483.617, as enacted by House Bill No. 1634 of the 79th General Assembly, refers only to fees chargeable against the county upon dismissal of criminal cases and is ineffective insofar as it purports to nullify provisions of statutes relative to costs in criminal cases resulting in conviction or acquittal.
<a href="#">141-79</a>	June 22		Opinion Letter to Dr. Arthur L. Mallory

143-79			Withdrawn
<a href="#">144-79</a>	June 27		Opinion Letter to The Honorable Gary L. Smith
<a href="#">145-79</a>	June 28		Opinion Letter to The Honorable Jerry E. McBride
<a href="#">147-79</a>	Aug 16	RECORDER OF DEEDS.	Compensation of the recorders of deeds in second class counties and in third class counties where the offices of the clerk of the circuit court and recorder of deeds are separate, is provided for in Section 50.334, RSMo, as enacted by S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257 of the 79th General Assembly, effective at the beginning of such officers' terms, January 1, 1979.
<a href="#">148-79</a>	Aug 7	SCHOOLS.	Remedial, guidance, counseling, and other auxiliary services may be provided to any child after the regular school day, on weekends, or during the summer on public school premises or neutral sites, conducted by school district employees, regardless of whether the child regularly attends a public or parochial school. Secular instructional materials and/or equipment used in connection with the program may be provided to participating pupils. Bus transportation designed solely for the purpose of transporting pupils from their nonpublic schools to the public school site may not be provided.
<a href="#">149-79</a>	Sept 20	SCHOOLS.	<p>1. A school district which had a term of less than 180 days and less than 174 days of actual pupil attendance may remain eligible for state aid providing it has scheduled two-thirds as many make-up days as were lost the previous year due to inclement weather if it makes up all of the first eight days missed plus one-half of the days missed in excess of eight.</p> <p>2. The term "inclement weather," as found in § 171.033, RSMo 1978, does not include uncomfortably hot days.</p> <p>3. A school district may make up days lost because of inclement weather by extending the school day by one-half hour as provided in § 160.041.2, RSMo 1978, in lieu of the scheduled make-up days.</p> <p>4. Under § 160.041, RSMo 1978, a school district may not operate its schools on a "snow schedule" by beginning daily sessions one hour later than usual and dismissing one hour earlier than usual for a period of time delineated in advance.</p>
151-79	Aug 15		Withdrawn
<a href="#">152-79</a>	Aug 6		Opinion Letter to The Honorable John L. Goldman
153-79			Withdrawn

<a href="#">154-79</a>			Withdrawn
<a href="#">155-79</a>	Nov 7		Opinion Letter to The Honorable John T. Russell and The Honorable Morris Westfall
<a href="#">157-79</a>	Aug 9		Opinion Letter to The Honorable Gary G. Sprick
<a href="#">160-79</a>	Oct 3		Opinion Letter to The Honorable Glenn H. Binger
<a href="#">161-79</a>	Nov 27		Opinion Letter to The Honorable Philip R. Pruett
<a href="#">162-79</a>	Aug 13		Opinion Letter to Dr. Arthur L. Mallory
<a href="#">164-79</a>	Aug 16		Opinion Letter to Dr. Arthur L. Mallory
<a href="#">165-79</a>	Nov 13		Opinion Letter to The Honorable Frank Bild
172-79			Withdrawn
<a href="#">174-79</a>	Sept 25		Opinion Letter to The Honorable Stephen R. Sharp
<a href="#">175-79</a>	Oct 10	CONSTITUTIONAL AMENDMENT. PENSIONS.	Neither the provisions of Art. VII, § 14, Mo. Constitution (as amended in 1978), nor the provisions of C.C.S. No. 2 for H.B. No. 130 of the 80th General Assembly, both of which require actuarial evaluation of certain public retirement plan changes which increase benefits apply to a proposed, but not yet introduced, house joint resolution which would purport to amend Art. VI, § 25, of the Missouri Constitution to allow certain counties and municipalities to provide for the payment of periodic cost of living increases in pension and retirement benefits to law enforcement and fire personnel.
<a href="#">177-79</a>	Oct 12		Opinion Letter to The Honorable Truman E. Wilson
<a href="#">178-79</a>	Oct 18	LIQUOR.	If an individual is convicted of supplying intoxicating liquor to a minor, there is no violation of § 311.060 RSMo or Regulation 11 CSR 70-2.140(13).
<a href="#">180-79</a>	Nov 9	AUCTIONEERS.	With respect to § 343.080, RSMo, and § 343.090, RSMo, concerning auctioneers' license fees, such fees under § 343.080, which are required to be paid to the county clerk for the issuance of auctioneers' licenses, are levies on behalf of the state, and the clerk should account to the state of Missouri for such fees. The county clerk's fee under § 343.090 is a separate fee of two dollars for the issuance of such auctioneers' licenses to be paid by the clerk into the county general revenue fund.
<a href="#">181-79</a>	Sept 21		Opinion Letter to Paul R. Ahr, Ph.D.
<a href="#">182-79</a>	Oct 16	COUNTY CLERKS. ELECTIONS.	House Bill No. 148 of the 80th General Assembly, which authorizes a \$3.00 charge by the county clerk for various services performed by him, does not authorize the clerk's charging for certain election



			procedures.
<a href="#">183-79</a>	Nov 20	COUNTY CLERK. FEES. ELECTIONS.	House Bill No. 148 of the 80th General Assembly, which authorizes a three dollar charge by the county clerk for various services performed by him does not authorize the clerk to charge for filing certain reports or statements required to be filed with his office under the Campaign Finance Disclosure Law, Chapter 130, RSMo 1978, as amended by Senate Bill No. 129, 80th General Assembly.
193-79			Withdrawn
<a href="#">195-79</a>	Dec 5		Opinion Letter to The Honorable Leary G. Skinner
197-79			Withdrawn
<a href="#">201-79</a>	Dec 4		Opinion Letter to The Honorable James C. Kirkpatrick
<a href="#">202-79</a>	Dec 10		Opinion Letter to The Honorable Daniel M. Buescher
<a href="#">205-79</a>	Dec 5		Opinion Letter to Dr. Arthur L. Mallory
<a href="#">207-79</a>	Dec 31		Opinion Letter to The Honorable Edwin L. Dirck
<a href="#">208-79</a>	Dec 7		Opinion Letter to The Honorable Patrick Dougherty
<a href="#">213-79</a>	Dec 18		Opinion Letter to The Honorable Gary E. Stevenson
<a href="#">214-79</a>	Dec 17	COUNTY COLLECTORS.	A county collector is required to pay into the county treasury the fees received by him under §§ 139.090 and 150.150, as amended by House Bill No. 148, 80th General Assembly, respecting the collection of a one dollar fee for duplicate personal property tax receipts issued by him and a five dollar fee for the issuance of certain vendors' licenses.
219-79			Withdrawn
<a href="#">221-79</a>	Dec 20		Opinion Letter to The Honorable Abe R. Paul

COUNTIES: The county court of a third class county may,  
COUNTY COURT: under certain circumstances, lease space in  
HIGHWAY PATROL: the county courthouse for a proper charge to  
an auto license fee agent, or to the Social  
Security Administration and may provide free space to the State  
Highway Patrol.

September 21, 1979

OPINION NO. 1

The Honorable George Pickett  
Prosecuting Attorney  
Clinton County  
116 North Main  
Plattsburg, Missouri 64477



Dear Mr. Pickett:

This opinion is in response to an opinion request by your predecessor, Lawrence V. Fisher, asking as follows:

"(1) Does the County Court of a third class county in the State of Missouri have the right to lease space in a county courthouse to a person operating a license fee bureau?

"(2) Does the County Court of a third class county in the State of Missouri have the right to allow a license fee bureau to occupy space in a county courthouse without the payment of rent?

"(3) Does the County Court of a third class county in the State of Missouri have the right to permit other state or federal offices such as the Highway Patrol and/or the Social Security Administration to occupy space in the county courthouse free of charge?"

In our Opinion No. 55-1978, we stated:

"With respect to that part of your question which pertains to the use of county equipment or courthouse property by a private firm, we note that we have

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issued several opinions which are relevant to your question. That is, in our Opinion No. 150, dated April 28, 1971 to Gilchrist, this office concluded that a farmers mutual insurance company is a private commercial enterprise and may not be permitted to occupy office space in the county courthouse for the conduct of its business. In our Opinion No. 15, dated February 23, 1955 to Carr, this office concluded that a county court may not lawfully permit the usage of public property in the form of office space in a county courthouse for the conduct of a private commercial enterprise. In our Opinion No. 42, dated December 20, 1954, to Hosmer, this office concluded that a county court did not have the authority to rent space in the courthouse to private persons for private use. In our Opinion No. 20, dated February 13, 1951 to Curry, this office concluded that the county courts do not have authority to lease or permit the use of space in the county courthouse for private purposes. In our Opinion No. 63, dated February 16, 1954, to Moody, this office concluded that a township has no authority to use township machinery to do work for private individuals for hire. In our Opinion No. 5, dated January 12, 1970, this office concluded that there were exceptions to the prohibition against the county leasing public property in general so that leases may be permissible in space other than courthouse space where the lease of the county property to private individuals was not an interference with the public use of the county property by the county, the county had no immediate need for the facilities for county purposes and the lease was to the financial betterment of the county. In our Opinion No. 4, dated December 9, 1966 to Evans, this office concluded that publicly owned equipment could not be used to render nonpublic service."

The Honorable George Pickett

In answer to your first two questions, it is our view that the license fee agent is clearly an independent contractor and not an employee of the State of Missouri although he is appointed by the Director of Revenue to collect motor vehicle license fees and taxes pursuant to Section 136.055, RSMo. Although he acts as a private individual, he nevertheless performs a quasi-governmental function. Such agent receives a fee prescribed by statute, and the county court is not authorized to furnish such agent gratuities. Although the county court has the authority to manage all county business as prescribed by law under Section 7 of Article VI of the Constitution and has the statutory authority to control and manage the real and personal property belonging to the county under Section 49.270, RSMo, we do not believe that the county court has authority to provide free space for such licensing agent. It is, however, our view that since the license agent performs a quasi-governmental function, he may be given the opportunity to rent space for that function in the courthouse for a proper monetary consideration so long as the use of such space by such agent does not interfere with the use of the courthouse for county purposes.

You also ask whether the county court has authority to allow Social Security Administration representatives to occupy space in the courthouse. We assume you refer to the permanent allocation of space to such representatives as opposed to the casual use of such space for such purposes. While such a federal agency clearly performs a governmental function, it is our view that such function is not sufficiently related to the function performed by the county government to support the furnishing of free permanent space for the use of such agency. We are of the view that such space may be furnished by the county court to that agency for a proper monetary consideration so long as the furnishing of such space to such agency does not interfere with the use of the courthouse for county functions.

Your last question asks whether the county court of a third class county has the right to permit the Highway Patrol to occupy space in a county courthouse free of charge.

It is our understanding that it has been a practice of long standing for the Highway Patrol to make use of available space in such courthouses. We have been informed that there are approximately ten Highway Patrol zone offices (local enforcement groups) and forty-three locations where the Highway Patrol is presently administering Missouri drivers' examinations through the use of courthouse space. We are also advised that the individual zone

The Honorable George Pickett

offices are being used for the preparation of arrest and accident reports, contacts with other county offices such as the sheriff, judicial officials, and the like. The courthouses are also used by the Highway Patrol as operational sites for drivers' examinations on a periodic basis for the purpose of complying with Section 302.173, RSMo, which specifies that the examination will be made available in each county.

Without burdening this opinion further with a discussion of the many duties performed by the Highway Patrol, we point out that such duties are interwoven with many of the functions and objectives of county government. We view the functions of the Highway Patrol as being sufficiently related to county government and to the benefit of the county to support the use of at least limited free space by the Highway Patrol on an available basis at the discretion of the county court so long as the furnishing of such space does not interfere with the use of the courthouse for county functions.

#### CONCLUSION

It is the opinion of this office that the county court of a third class county may, under certain circumstances, lease space in the county courthouse for a proper charge to an auto license fee agent or to the Social Security Administration and may provide free space to the State Highway Patrol.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft".

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

March 1, 1979

OPINION LETTER NO. 2

The Honorable Truman Wilson  
Chairman, Senate Appropriations Committee  
Room 221, Capitol Building  
Jefferson City, Missouri 65101

Dear Senator Wilson:

This letter is written in response to your request which reads as follows:

"If an inmate in the Missouri Department of Corrections is also a veteran and is eligible for collecting VA educational benefits and is also simultaneously receiving educational instruction under a separate federal grant, and therefore his VA benefit is not applied to his cost of education, can the State of Missouri charge him a per diem cost for food, housing, shelter, etc. an amount of his VA benefit per month?"

Assuming that the inmate is receiving Veterans Administration benefits and that he is solvent, the issue becomes whether the State may impose a per diem charge for living expenses incurred by an inmate in the Missouri Division of Corrections institution.

While a jurisdiction can, by statute, require an inmate to pay for portions of his confinement after conviction, no such requirement can be placed on an inmate absent statutory authority. The court, in In re Gardner, 264 N.W. 647 (Wisc. 1936), stated:

"That there are no cases bearing directly upon the proposition of the text [that a convict cannot be required to pay his expenses while in

Page Two  
The Honorable Truman Wilson

custody] is quite persuasive that it has never occurred to any one that a prisoner or his estate is liable for his support while in prison, in the absence of a statute making him so liable, and the proposition from the nature of it seems self-sustaining." 264 N.W. at 648.

See also Department of Welfare v. Brock, 306 Ky. 243, 206 S.W.2d 915 (1947); Auditor General v. Hall, 300 Mich. 215, 1 N.W.2d 516, 139 A.L.R. 1022 (1942).

While there is statutory authority to impose liability for support upon inmates of county jails, \$221.070, RSMo 1969, and to apply payments made by inmates of halfway houses toward the per diem expenses of a halfway house, \$216.221(4), RSMo 1975 Cum. Supp., we find no statute imposing liability upon inmates of a Division of Corrections institution for his per diem expenses.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

CHILD SUPPORT:  
COURT COSTS:  
PROSECUTING ATTORNEY:

Prosecuting attorneys are not required to pay court filing fees in civil actions to enforce or collect child support obliga-

tions for persons referred to their offices by the Division of Family Services of the Department of Social Services either in Aid to Families with Dependent Children (AFDC) cases in which assignment of support rights has been made to the Division in behalf of the state or non-AFDC cases wherein there is no such assignment under Section 207.025, House Bill No. 1634, 79th General Assembly.

June 27, 1979

OPINION NO. 5



David R. Freeman, Director  
Department of Social Services  
Broadway State Office Building  
Jefferson City, Missouri 65101

Dear Mr. Freeman:

This opinion is in response to a question posed by Mr. James F. Walsh, previous Director of the Department of Social Services. The question asks:

"Are prosecuting attorneys required to pay court filing fees in civil actions to enforce or collect child support obligations for persons referred to their office by the Division of Family Services: either AFDC cases in which assignment of support rights has been made to the Division in behalf of the state or in non-AFDC cases wherein there is no such assignment?"

Section 207.025, RSMo, House Bill No. 1634, 79th General Assembly, provides in pertinent part:

"1. There is established within the division of family services a single and separate organizational unit to administer the state plan for child support enforcement; provided, however, that the duty under the state plan to litigate or prosecute support actions shall be performed by the appropriate prosecuting attorney and provided that the division of family services shall fully utilize existing



David R. Freeman, Director

IV-A division staff to perform child support enforcement duties where so approved by the Department of Health, Education and Welfare and where consistent with federal requirements as specified in PL 93-647 and 45 CFR, Section 303.20. For the purpose of utilizing the resources of counties in the enforcement and collection of support obligations under the state plan, the director shall enter into cooperative agreements with county governing bodies, circuit courts and circuit clerks and prosecuting attorneys. . . .

\* \* \*

"4. The director of the division shall render child support enforcement services to persons who are not recipients of public assistance as well as to such recipients. An application shall be filed with the division for services, and an application fee may be required by the division. An additional fee for expenses incurred in excess of the application fee may be required by the division in providing services; provided, however, that any additional fee shall not exceed ten percent of any support money recovered and provided that the amount of the fee shall be agreed to by the applicant in writing. Expenses incurred by a county under a cooperative agreement with the division in the prosecuting attorney's office or in the circuit clerk's office in enforcing or collecting a child support obligation in any civil litigation or other noncriminal proceeding for a person who is not a recipient of public assistance, but who has made an application with the division for child support enforcement services shall be construed as expenses incurred by the division. The application fee and any additional fee may be deducted from the support money recovered. Fees collected pursuant to this subsection shall be deposited in the child support enforcement fund in the state treasury.

"5. Each prosecuting attorney in this state, as an official duty of such office, shall litigate or prosecute any action necessary to secure support for any person referred to such office by the division of family services, including, but

David R. Freeman, Director

not limited to, reciprocal actions under chapter 454, RSMo, actions to enforce obligations owed to the state under an assignment of support rights and actions to establish the paternity of a child for whom support is sought."

It is clear from the foregoing that the prosecutor performing such a duty is acting officially.

It is also clear that neither the state nor the county is liable for costs unless there is a specific statutory provision authorizing the payment of such costs. Murphy v. Limpp, 147 S.W.2d 420, 423 (Mo. 1940); Automagic Vendors, Inc. v. Morris, 386 S.W.2d 897, 900-901 (Mo. Banc 1965); Hartwig-Dischinger Realty Co. v. Unemployment Compensation Comm., 168 S.W.2d 78, 82 (Mo. Banc 1943); Dubinsky Brothers, Inc. v. Industrial Comm. of Mo., 373 S.W.2d 9, 16 (Mo. Banc 1963); Labor's Educational and Political Club v. Danforth, 561 S.W.2d 339, 350 (Mo. Banc 1978).

A statute which conceivably would apply to child support enforcement actions filed by the prosecuting attorney pursuant to §207.025 and which establishes the liability for court costs is §514.210 which provides:

"When any suit or proceeding, instituted in the name of the state or any county, on the relation or in behalf or for the use of any private person, and where a suit shall be commenced in the name of one person to the use of another, the person for whose use the action is brought shall be held liable to the payment of all costs. And in all such cases, as well where there is security for costs, or where the attorney is liable for the same, judgment for costs shall be rendered against the person for whose use the action is brought, the security or attorney, in like manner and to the same extent as if the suit or proceeding had been instituted in his own name."

However, we do not believe actions brought by the prosecuting attorney under §207.025 to enforce child support obligations are suits or proceedings "on the relation or in behalf or for the use of any private person" §514.210. Rather, we believe these actions are brought to further the interest of the state in recouping public assistance payments made in the past to families with dependent children or to minimize such payments in the

David R. Freeman, Director

future. Thus, we feel that the state is "the party beneficially interested in the suit", In re Green, 40 Mo.App. 491, 493 (1890), and that the benefit accruing to the obligee of the support obligation as a result of the action is secondary or incidental to the state's dominant interest. We accordingly do not believe \$514.210 pertains to proceedings instituted pursuant to \$207.025.

Suits brought under \$207.025 are brought because of the clear and express legislative policy mandating such actions by the prosecuting attorney as an official duty of the prosecuting attorney.

" . . . [W]hen the prosecuting attorney acts ex officio the state is acting directly through him.

" . . . He has no right to institute the proceeding at all as prosecuting attorney, unless he does so in behalf of the state. . . ." State ex rel. Thrash v. Lamb, 141 S.W. 665, 669-670 (Mo. Banc 1911)

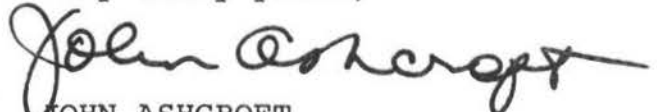
We therefore conclude that under the rulings of the Supreme Court of Missouri, noted above, the payment of filing fees, in cases initiated by the prosecuting attorney to enforce child support obligations under Section 207.025, is not authorized.

#### CONCLUSION

It is the opinion of this office that in civil actions to enforce or collect child support obligations brought by the prosecuting attorney under Section 207.025 RSMo (1978) upon referral of the Division of Family Services of cases in which assignment of support rights has been made to the Division in behalf of the state or non-AFDC cases wherein there is no such assignment, court filing fees are not authorized and need not be paid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Louren R. Wood.

Very truly yours,



JOHN ASHCROFT  
Attorney General

February 8, 1979

OPINION LETTER NO. 8  
Answer by Letter - Hyatt

Honorable Phillip M. Barry  
Representative, District 105  
c/o House Post Office  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Barry:

This is in response to your request for an opinion which reads as follows:

"Does a school board of education have the right and authority to grant permission to any organization to offer or distribute religious publications or material to any or all of the student body either inside of the educational facility or on the school grounds?"

Prior Attorney General's Opinion No. 265 (1969) dealt with a similar issue. There the question was whether a public school board could grant usage of classrooms to the Ministerial Alliance to conduct religious training. That opinion concluded that a school board could not allow its classrooms to be used for such a purpose. That conclusion was based on two points: (1) a school district may act only by express statutory authority or as is necessary to effectuate the purposes of its creation, and (2) the current version of Section 177.031, RSMo 1969, which authorizes a school board to allow the free use of its buildings and grounds ". . . for any other civic, social and educational purpose that will not interfere with the prime purpose to which the houses, buildings and grounds are devoted. . . ." does not mention religious purposes among those permitted. As we stated in Opinion No. 265, this failure to include religious purposes is significant in light of the legislative history of that section since:

Honorable Phillip M. Barry

"From 1881 until 1915, religious purposes were expressly mentioned as an authorized use of public school property. The reference to religious purposes was dropped in 1915. It is logical to assume, therefore, that the legislature intended in 1915 to revoke the authority previously given to allow the use of public school property for religious purposes."

In addition to the cases cited in that opinion, we would direct your attention to cases from other jurisdictions prohibiting the distribution of religious material on school premises: Tudor v. Board of Education of Borough of Rutherford, 100 A.2d 857 (N.J. 1953); Brown v. Orange County Board of Public Instruction, 128 So. 2d 181 (Fla.Ct.App. 1960); Goodwin v. Cross County School District No. 7, 394 F.Supp. 417 (D.C.Ark. 1973); Meltzer v. Board of Public Instruction of Orange County, Florida, 548 F.2d 559 (5th Cir. 1977).

We believe the situation you describe of a school board authorizing the distribution of religious material on school grounds would be judged under the same legal principles used in Opinion No. 265. The distribution of religious publications or material is obviously a use of school property for a religious purpose. Since a school board has no statutory authority to allow school property to be used for religious purposes, we must conclude that authorizing the distribution of religious publications or material on school grounds would be unlawful.

While the advance of religious beliefs is considered by me and I believe by most people to be desirable, this office is compelled by the weight of the law to conclude that school boards may not allow the use of the public schools to assist in this effort. Opinion No. 265 (1969), Article IX, Section 8, and Article I, Section 7 of the Missouri Constitution.

It should be noted that the prohibition against the use of public schools for religious purposes applies with equal force to the promotion of any and all religious organizations and thus may serve to protect the school children of this state from a wide variety of organizations, sects, or cults.

It is the opinion of this office that a board of education has no legal authority to grant permission to any organization to offer or distribute religious publications or material to any or all of the student body either inside the educational facility or on the school grounds.

Yours very truly,

JOHN ASHCROFT  
Attorney General

CITIES, TOWNS AND VILLAGES: A third class city does not have  
CONSTITUTIONAL LAW: authority to provide free space to  
a chamber of commerce or a state  
license fee agent. A third class city does not have authority  
to rent an office to a state license fee agent at less than a  
reasonable rent, and such a city does not have authority to  
donate money to private not-for-profit corporations.

September 27, 1979

OPINION NO. 9

The Honorable James F. Antonio  
State Auditor  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Antonio:

This opinion is in response to a request of your predecessor, Mr. Thomas M. Keyes, asking:

1. Is it permissible under Missouri law for the City of Aurora to provide office space free of rent to the Chamber of Commerce?
2. Is it permissible under Missouri law for the City of Aurora to rent office space to a state license fee agent for \$25 per month which is less than a reasonable rent for such space?
3. Is it permissible under Missouri law for the City of Aurora to donate without restriction \$2,500 to a day care center, \$2,500 to a senior citizen group, and \$500 to the Barry-Lawrence County Mental Health Association?

The facts involved in this request include that the City of Aurora provides office space at no charge to the Chamber of Commerce and provides office space to a state license fee agent for a rental fee of \$25 per month. Furthermore, the city has donated money to a day care center, a senior citizen group, and a mental health association, all of which are not-for-profit



The Honorable James F. Antonio

corporations. Federal revenue sharing money was used to make each donation. We note that Aurora is a city of the third class.

Appropriate to your request is Art. VI, § 25, Mo. Constitution (as amended 1976), which provides:

No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation except as provided in Article VI, Section 23 (a) and except that the general assembly may authorize any county, city or other political corporation or subdivision to provide for the retirement or pensioning of its officers and employees and the widows and children of deceased officers and employees and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services and to their beneficiaries or estates; and except, also, that any county of the first class is authorized to provide for the creation and establishment of death benefits, pension and retirement plans for all its salaried employees, and the widows and minor children of such deceased employees.

Also appropriate is Art. VI, § 23, Mo. Constitution (as amended 1976), which provides:

No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution.

The Honorable James F. Antonio

In responding to your first two questions, we will first discuss some general principles of law and then relate those principles to the factual situations you raise.

Clearly a municipality is a creature of the legislature possessing only those powers expressly granted or those necessarily or fairly implied in or incident to express grants or those essential to the declared objects of the municipality. Anderson v. City of Olivette, 518 S.W.2d 34 (Mo. 1975); Kennedy v. City of Nevada, 281 S.W. 56 (K.C. 1926).

Section 77.010, RSMo 1978, in pertinent part provides that:

[A]ny city of the third class . . . may receive and hold property, both real and personal, within such city, and may purchase, receive and hold real estate within or without such city for the burial of the dead; and may purchase, hold, lease, sell or otherwise dispose of any property, real or personal, it now owns or may may hereafter acquire; . . . .

Section 77.140, RSMo 1978, provides in pertinent part:

The council may also provide for the erection, purchase or renting of a city hall, . . . and all other necessary buildings for the city; and may sell, lease, abolish or otherwise dispose of the same, and may enclose, improve, regulate, purchase or sell all public parks or other public grounds belonging to the city, and may purchase and hold grounds for public parks within the city, or within three miles thereof.

With some exceptions, not relevant here, a city cannot construct a building solely for the purpose of renting it to third parties. However, it seems clear that generally a building constructed for city purposes may be used for other purposes when not needed for city purposes if such use will not interfere with the city use.



The Honorable James F. Antonio

For instance, a city can purchase property for municipal purposes and hold it after it is no longer necessary for such purpose. Kennedy v. City of Nevada, supra.

If a city owns property which cannot be used for a city purpose for a time, it may rent it for a private use during that period. Harris v. City of St. Louis, 111 S.W.2d 995 (St. L. 1938); Heger v. City of St. Louis, 20 S.W.2d 665 (Mo. 1929).

It is important that the city be in a situation where the property to be rented was originally developed for a city use or is being held for a later city use. If the city develops property solely for rental purposes but shrouds that purpose in the rhetoric of city use, the court will disallow such attempt. State ex rel. City of Jefferson v. Smith, 154 S.W.2d 101 (Mo. banc 1941).

However, as is stated in the recognized treatise on municipal corporations, McQuillin:

If it [city] has more room is such a building than is needed for municipal purposes, it may rent out a portion of it, though a municipal corporation cannot erect buildings as an investment. And where a town erects a new municipal building, thus leaving useless an old one, it may repair the old one for the purpose of renting it. While this would be illegal if the primary purpose were to invest money in a building to rent, the town, having no longer any use for the building, need not sacrifice it but may do what one might prudently do with such a building. . . .  
10 McQuillin 34, Municipal Corporations, § 28.13.

By analogy the case of State ex rel. Mitchell v. City of Sikeston, 555 S.W.2d 281 (Mo. banc 1977), is instructive. There the Missouri Supreme Court allowed the City of Sikeston to build a power plant much in excess of the city's present needs with the understanding that surplus power would be sold until the excess capacity was needed by the city.

The Honorable James F. Antonio

From the foregoing and in the absence of relevant deed restrictions, we believe the following rule can be stated: When a municipality in Missouri is in possession of excess property which was acquired for city use in good faith, it may rent that property during the time that it is not needed for city purposes so long as there is no interference with public use of city property thereby. We believe the Missouri courts would impose a requirement that the rental be reasonable and not gratuitous.

We assume that the space in question in the Aurora City Hall is not needed for city purposes, that the use noted does not interfere with city uses and that there are no deed restrictions which must be considered. In any event, those are specific factual questions which we should not attempt to resolve.

Your first question asks whether it is proper for the City of Aurora to provide space free to the Chamber of Commerce. Based on the foregoing, we hold that it is not. Assuming as we have, that the space is properly available, it may be rented at a reasonable rate to the Chamber of Commerce, but it may not be provided gratuitously.

Similarly, we believe space may be provided to a license fee agent if reasonable rental is paid.

In connection with your third question relating to a donation of federal revenue sharing money to a day care center, a senior citizen group, and a mental health association, it is first recognized that these groups are not-for-profit corporations and are private in nature although a number of their services may involve some public needs. Further, Op. Atty. Gen. No. 69, Marshall, Feb. 11, 1974 (Mo.), copy enclosed, concluded that the City of Ashland could not appropriate money to the Ashland day care center.

We note that a recent opinion of this office, Op. Atty. Gen. No. 98, Mueller, May 25, 1977 (Mo.), held that a city of the fourth class has authority to provide for the relief of its poor inhabitants. Under the facts presented to this office in connection with your request, we have no reason to believe that this particular opinion would be applicable inasmuch as we do not find facts to show that we are talking about the relief of poor inhabitants. Thus, we believe that Op. Atty. Gen. No. 69, 1974, answers your third question, and that it is not permissible for the City of Aurora to donate money to the day care center, senior citizen group, or mental health association.

The Honorable James F. Antonio

CONCLUSION

It is the opinion of this office that a third class city does not have authority to provide free space to a chamber of commerce or a state license fee agent. A third class city does not have authority to rent an office to a state license fee agent at less than a reasonable rent. Further, such a city does not have authority to donate money to private not-for-profit corporations.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Preston Dean.

Very truly yours,

A handwritten signature in dark ink, reading "John Ashcroft". The signature is fluid and cursive, with a long horizontal stroke at the end.

JOHN ASHCROFT  
Attorney General

Enclosure

Op. Atty. Gen. No. 69,  
Marshall, Feb. 11, 1974 (Mo.)

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

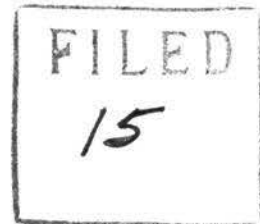
(314) 751-3321

65101

April 4, 1979

OPINION LETTER NO. 15  
(Answer by Letter-Laughrey)

Mr. David R. Freeman  
Director  
Department of Social Services  
Broadway State Office Building  
Jefferson City, Missouri 65101



Dear Mr. Freeman:

This opinion letter is in response to your predecessor's request for an answer to the following question:

"Is the Division of Investigation, Department of Social Services a 'criminal justice agency' as defined in Title 28, Chapter 1, Part 20 of the Code of Federal Regulations."

Title 28, Chapter 1, part 20.3(c) defines a criminal justice agency as:

"1) Courts; 2) A government agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its budget to the administration of criminal justice."

Clearly, the Division of Investigation of the Department of Social Services is a subunit of a governmental agency and as you indicated, allocates a substantial part of its budget to detect welfare fraud. The question then is whether it performs the "administration of criminal justice pursuant to a statute or an executive order."

Title 28, Chapter 1, part 20.3(d) defines the administration of criminal justice as any of the following activities:

Mr. David R. Freeman

" . . . detection, apprehension . . . prosecution, adjudication of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities in the collection, storage and dissemination of criminal history record information."

As you have explained, the primary function of the Division of Investigation is to investigate and refer for prosecution instances of welfare fraud. Investigators gather evidence and interview suspects and witnesses and work closely with local prosecutors until the case has been adjudicated. Since these activities involve the "detection, apprehension, and prosecution of accused persons or criminal offenders," the Division of Investigation performs the administration of criminal justice within the meaning of Title 28, Chapter 1, part 20 of the Code of Federal Regulations. The only remaining question then is whether the Division of Investigation conducts its activities pursuant to a statute or an executive order.

The Department of Social Services was created pursuant to statute, §13.1 of the Omnibus State Reorganization Act of 1974. Under that provision and §191.050, RSMo, the Director of the Department of Social Services has the power to make "inquiries and investigations . . . as may be necessary in pursuance of his duties." While the Director of the Department of Social Services is not specifically directed by statute to investigate welfare fraud as defined in §§205.966 and 205.967, RSMo Supp. 1975, and §§570.030 through 570.050, V.A.M.S., he is directed by statute to administer the Department of Social Services in the best interest of its clients and in the most economical and efficient way. Since welfare fraud is neither economical nor in the best interest of the Department of Social Services' clients, any welfare fraud investigation by the Director of Social Services would be pursuant to his duties. It is therefore the opinion of this office that the investigations made by the Division of Investigation are made pursuant to statute.

Moreover, on May 17, 1978, the Governor of the State of Missouri approved the Department of Social Services' Plan which had been submitted pursuant to §1.6(2) of the Omnibus State Reorganization Act of 1974. Such plan provides in part as follows:

"The Division of Investigation shall have the following functions and duties:

Mr. David R. Freeman

1. To have as its principal function the investigation, identification and collection of evidence for use in criminal prosecutions relating to alleged abuses, suspected frauds and other violations relating to programs administered by the Department of Social Services."

We find that this procedure falls within the meaning of executive order which is defined by Title 28, Chapter 1, part 20.3(h) as:

"an order of the President of the United States or the Chief Executive of a state which has the force of law and which is published in a manner permitting regular public access thereto."

It is therefore the opinion of this office that the investigations made by the Division of Investigation are made pursuant to executive order. Therefore, the Division is a criminal justice agency within the meaning of Title 28, Chapter 1, part 20 of the Code of Federal Regulations.

Our conclusion is buttressed by the appendix to Title 28, Chapter 1, part 20 of the Code of Federal Regulations, wherein it states:

"The definitions of criminal justice agency and administration of criminal justice of 20.3(c)(d) must be considered together. Included as criminal justice agencies would be traditional police, courts and correction agencies as well as subunits or noncriminal justice agencies performing a function of the administration of criminal justice pursuant to federal or state statutes or executive order. The above subunits of non-criminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud."

Since the Office of Investigation of the United States Department of Agriculture has responsibilities similar to the Division of Investigation of the Department of Social Services, it seems logical that the Division of Investigation of the Department of Social Services should be entitled to the status of a criminal justice agency.

Very truly yours,



JOHN ASHCROFT  
Attorney General



PENSIONS:

PUBLIC SCHOOL RETIREMENT SYSTEM:

ST. LOUIS CITY SCHOOL RETIREMENT SYSTEM:

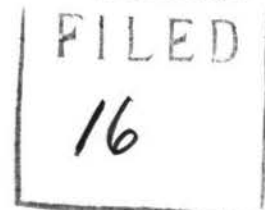
Sections 169.410 through  
169.540 of the Revised  
Statutes of Missouri, as  
amended, do not allow

the Board of Trustees of the Public School Retirement System of the  
City of St. Louis to establish a life insurance program for its  
active members and/or retirees.

OPINION NO. 16

January 25, 1979

Honorable Thomas A. Villa  
State Representative, District 103  
Room 414  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Villa:

This letter is in response to your request for an opinion  
which reads as follows:

"Do Sections 169.410 to 169.540 of the  
Revised Statutes of Missouri authorize the  
Board of Trustees of the Public School Re-  
tirement System for the City of St. Louis  
to establish a life insurance program for  
its active members and/or retirees?"

In your opinion request, it is also indicated that the Board  
of Trustees of the Public School Retirement System for the City  
of St. Louis is considering a proposal to purchase term or other  
life insurance on the life of each active member and retiree,  
and that the costs of purchasing these policies would be covered  
out of the earnings of the assets of the retirement system. Pres-  
ently, the Board of Trustees does not anticipate that any addi-  
tional contributions from members or retirees of the Public School  
Retirement System for the City of St. Louis would be made to cover  
the cost of this insurance.

Section 169.420, Senate Bill No. 542 of the 79th General  
Assembly, Second Regular Session, establishes retirement systems

Honorable Thomas A. Villa

in school districts having a population of seven hundred thousand (700,000) or more inhabitants ". . . for the purpose of providing retirement allowances for employees of said school districts. . . ." (Emphasis added.)

Section 169.410(20), Senate Bill No. 542 of the 79th General Assembly, Second Regular Session, defines the term retirement allowance as follows:

"'Retirement allowance' shall mean equal monthly payments for life to a retirant or to such beneficiary as is entitled to same as provided herein;" (Emphasis added.)

The courts of this state have consistently applied the principle of maximum expressio unius est exclusio alterius. Thus, the Supreme Court has held:

". . . When, . . . 'a statute enumerates the subjects or things on which it is to operate, or the persons affected, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned; . . .'" Giloti v. Hamm-Singer Corp., 396 S.W.2d 711, 713 (Mo. 1965).

See also Brown v. Morris, 290 S.W.2d 160 (Mo. banc 1956); Kroger Grocery & Baking Co. v. City of St. Louis, 106 S.W.2d 435 (Mo. 1937); DePoortere v. Commercial Credit Corp., 500 S.W.2d 724 (Mo.Ct.App. at Spr. 1973).

Here, the legislature has expressly stated that the purpose of the retirement system is to provide retirement allowances, that is, equal monthly payments for life to retirees or entitled beneficiaries. In expressing the retirement system purpose thusly, the legislature excluded all other purposes by omission.

Where the legislature has intended for retirement systems to purchase life insurance on members, it has expressly so stated:

"The state highway commission may contribute toward . . . life insurance benefits . . . for each employee who is a member of the state highway employees' and highway patrol retirement system. . . ." Section 104.270, RSMo Supp. 1977.



Honorable Thomas A. Villa

and,

"The board shall provide or contract for life insurance benefits for employees [who are members of the Missouri state employees' retirement system] . . ." Section 104.515.2, Senate Bill No. 497, 79th General Assembly, Second Regular Session.

CONCLUSION

It is therefore the opinion of this office that Sections 169.410 through 169.540 of the Revised Statutes of Missouri, as amended, do not allow the Board of Trustees of the Public School Retirement System of the City of St. Louis to establish a life insurance program for its active members and/or retirees.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Edward D. Robertson, Jr.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

ATHLETIC COMMISSION:

The Office of Athletics cannot define boxing, sparring, or wrestling by rule or regulation to include full contact karate.

OPINION NO. 18

February 22, 1979

James R. Butler, Director  
Department of Consumer Affairs,  
Regulation and Licensing  
505 Missouri Boulevard  
Jefferson City, Missouri 65101



Dear Mr. Butler:

This opinion is issued in response to your predecessor's request concerning the following questions:

"Does the Office of Athletics have the authority to regulate full contact karate: More specifically, may the Office of Athletics define boxing, sparring or wrestling by rule such that full contact karate would be considered either boxing, sparring or wrestling under Section 317.020, RSMo 1969?"

Section 317.020, RSMo 1969, provides in pertinent part:

"That the athletic commission [now Office of Athletics] of the state of Missouri shall have general charge and supervision of all boxing, sparring and wrestling exhibitions held in the state of Missouri, and it shall have the power, and it shall be its duty:

(1) To make and publish rules and regulations governing in every particular the conduct of boxing, sparring and wrestling exhibitions, the time and place thereof, and the prices charged for admissions thereto;"

The terms boxing, sparring and wrestling are not defined by the statutory language of Chapter 317, RSMo 1969. Apparently the General Assembly assumed that the three sporting activities were familiar to everyone and that no explanation of such common terms needed to be expressed.

The primary rule of statutory construction is to ascertain the intent of the lawmakers from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning. State v. Krause, 530 S.W.2d 684, 685 (Mo. Banc 1975); State ex rel. Dravo Corporation v. Spradling, 515 S.W.2d 512 (Mo. 1974); Missouri Pacific R.R. Co. v. Kuehle, 482 S.W.2d 505 (Mo. 1972).

Webster's Third International Dictionary defines each of the pertinent terms as follows:

boxing:       the art of attack and defense with  
                  the fists practiced as a sport

sparring:     scientific boxing

wrestling:    the sport consisting of the hand  
                  to hand combat between two unarmed  
                  contestants who seek to throw each  
                  other

The above definitions do not contain any reference to karate. Furthermore, the definitions are not so broad as to obviously include other unspecified types of contact sports activity.

The literal meaning of the term karate is "open hand". According to Webster's New World Dictionary of the American Language it is a Japanese system of self-defense characterized chiefly by sharp quick blows delivered with the hands and feet.

Although the interpretation and construction of a statute by an agency charged with its administration is entitled to great weight, the Office of Athletics cannot enlarge upon the scope and terms of the statute governing boxing, sparring and wrestling under the guise of its rulemaking power. Bresler v. Tietjen, 424 S.W.2d 65, 70 (Mo. Banc 1968); Foremost-McKesson, Inc. v. Davis, 488 S.W.2d 193 (Mo. Banc 1972).

In Bresler v. Tietjen, supra, the Missouri Supreme Court held that a licensing agency "cannot by rule constitute certain conduct violations of the statute which, in the absence of the rules, could not reasonably be so construed."

In California, where full contact karate is now regulated by an athletic commission, full contact karate is defined to be boxing by statute except with reference to certain specified

James R. Butler

provisions. See Cal. Bus. & Prof. Code § 18610 (Cum.Supp. 1978). This office is of the opinion that a similar statutory change must be made by the General Assembly if karate is to be defined as boxing for the purposes of regulatory action.

#### CONCLUSION

It is the opinion of this office that the Office of Athletics cannot define boxing, sparring, or wrestling by rule or regulation to include full contact karate.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jerry L. Short.

Very truly yours,

A handwritten signature in dark ink, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

AMBULANCES:  
DIVISION OF HEALTH:  
REORGANIZATION ACT:

The State Board of Health has  
authority to determine policy  
for the Division of Health.

OPINION NO. 20

December 21, 1979

The Honorable Ralph Uthlaut, Jr.  
State Senator, 23rd District  
Route #1  
New Florence, Missouri 63363

Dear Senator Uthlaut:

This opinion is in response to your question asking whether under the Omnibus State Reorganization Act of 1974 the State Board of Health has authority to make policy for the Division of Health and, if so, whether the Board of Health has the authority to set policy for the Bureau of Emergency Medical Services of the Division of Health which administers the provisions of Sections 190.090 through 190.195, RSMo 1978.

The State Board of Health was established pursuant to the provisions of Section 191.400.

Further, Section 191.410 provides in pertinent part:

The state board of health shall:

\* \* \*

(2) Be vested with all statutory responsibilities of the division of health other than those of an administrative nature;

\* \* \*

(4) Advise the director in the planning for and operation of the division of health.

The Honorable Ralph Uthlaut, Jr.

Section 190.185, provides:

The state board of health of Missouri shall adopt, amend, promulgate, and enforce such rules, regulations and standards with respect to all ambulances, ambulance service, attendant mobile emergency medical technicians, attendant-drivers and certificated apprentices to be licensed hereunder as may be designed to further the accomplishment of the purpose of this law in promoting safe and adequate ambulance services in the interest of public health, safety and welfare.

Subsection 3 of Section 13 of the Omnibus State Reorganization Act of 1974 provides:

All the powers, duties and functions of the division of health, chapters 191 and 192, RSMo, and others, are transferred by type II transfer to the division of health of the department of social services which is hereby created. The state board of health shall be vested with all the statutory duties and responsibilities assigned to it by law. The director of the division of health shall be appointed by the department director.

Subsection 7(b) of Section 1 of the Reorganization Act provides in part:

. . . Supervision by the director of the department under a type II transfer shall not extend to substantive matters relative to policies . . . of the transferred . . . division . . . board . . . unit or program, unless specifically provided by law.

The Reorganization Act became effective May 2, 1974. Section 190.185, became effective July 1, 1974. Section 191.410 became effective in 1967.

The Honorable Ralph Uthlaut, Jr.

It is our view that the effect of the provisions which we have quoted from the Reorganization Act is to preserve the authority of the State Board of Health under the provisions which we have quoted from Section 191.410 and that such provisions of the Reorganization Act were clearly not intended to nullify the subsequently effective provisions of Section 190.185, which we have quoted above.

We thus conclude that the State Board of Health has authority to determine policy for the Division of Health and that such authority obviously includes determining policy for the Bureau of Emergency Medical Services of the Division of Health.

#### CONCLUSION

It is the opinion of this office that the State Board of Health has authority to determine policy for the Division of Health.

The foregoing opinion which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

  
JOHN ASHCROFT  
Attorney General



*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

May 18, 1979

(314) 751-3321

OPINION LETTER NO. 23

The Honorable Charles J. Becker  
Representative, District 123  
Room 406, State Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Becker:

This letter is in response to your opinion request which asks whether the City of Arnold, Missouri, which has an assessed valuation of less than forty million dollars can establish an Individual Retirement Account, as defined by the United States Internal Revenue Service, for all city employees other than policemen or firemen.

We understand that cities generally may establish Individual Retirement Accounts for their employees. In your opinion request you state that the mayor and council of the City of Arnold, Missouri, are looking into a pension plan for city employees. You state that to date they have been led to believe that "Lagers" is the only plan that can be implemented by the city. In this connection, we call your attention to Section 70.615, RSMo, which provides:

"After October 13, 1967, a political subdivision shall not commence coverage of its employees who are neither policemen nor firemen under another plan similar in purpose to this system, other than under this system, except the federal social security old age, survivors, and disability insurance program, as amended; except that any political corporation or subdivision of this state, now having or which may hereafter have an assessed valuation of forty million dollars or more, which does not now have a pension system for its officers and employees adopted pursuant to

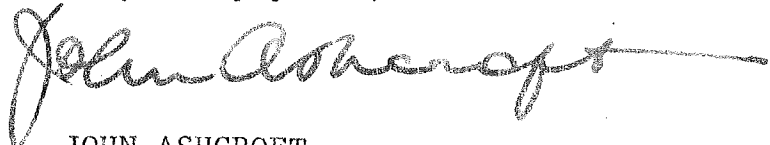
The Honorable Charles J. Becker

state law, may provide by proper legislative action of its governing body for the pensioning of its officers and employees and the widows and minor children of deceased officers and employees under a plan separate and apart from that provided in sections 70.600 and 70.670 and appropriate and utilize its revenues and other available funds for such purposes." (Emphasis added)

In our Opinion No. 128-1972, copy enclosed, we concluded that a city is prohibited by Section 70.615 from establishing a pension and retirement fund for employees, other than policemen or firemen, except under Lagers, other than the federal social security old age, survivors, and disability insurance program, as amended, unless the city has an assessed valuation of at least forty million dollars.

Clearly Section 70.615 provides that such a city "shall not commence coverage of its employees who are neither policemen nor firemen under another plan similar in purpose to this system (Lagers)" and clearly the express exceptions are not relevant in the premises. Since the IRA is a plan similar in purpose to Lagers, in view of this prohibition, we conclude that the city cannot establish Individual Retirement Accounts for its employees.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

Enclosure  
Opinion No. 128-1972

December 28, 1979  
Amended August 21, 1980

AMENDED OPINION LETTER NO. 25  
Answer by letter-Allen

Honorable James Antonio  
State Auditor  
State Capitol Building  
Jefferson City, MO 65101



Dear Dr. Antonio:

This is in response to a request from your predecessor for an opinion concerning the following questions:

1. Should the Missouri Division of Insurance assess against insurance companies the excess of the expenses of the division over the amount collected under Section 374.230 as seemingly required by Section 374.260, RSMo 1969?
2. May insurance companies, pursuant to Section 148.400, RSMo Cum. Supp. 1975, take as a credit against premium taxes any amount assessed pursuant to Section 374.260?

Section 374.260, RSMo 1978, provides:

In case the expenses of this division, including the salaries paid to the director and deputy director, shall exceed the amount collected under section 374.230, the director shall, annually, assess upon all insurance companies doing business in this state a sum equal to such excess, which he shall collect and apply in like manner as by this chapter authorized and required in respect to the fees payable by such companies. Such

Honorable James Antonio

assessments shall be made in proportion to the relative amounts of the assets of each company.

Section 374.230, RSMo 1978, is the section prescribing various fees, excluding examination fees, to be charged by the Division of Insurance for enumerated services. It should be noted that the Missouri legislature specifically indicates in this section and in § 374.260 what fees are to be used for the expenses for the Division of Insurance. Section 374.230 does not include, however, broker's and miscellaneous fees. Therefore, the broker's and miscellaneous fees such as under § 375.081, RSMo 1978, cannot be considered in determining whether the expenses of the Division exceed the amount collected under § 374.230. The Director shall assess all insurance companies doing business in this state a sum equal to any excess as determined under § 374.260 without regard to those fees not specifically enumerated in § 374.230.

Section 148.400, RSMo 1978, provides:

All insurance companies or associations organized in or admitted to this state may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, income taxes, franchise taxes, personal property taxes, valuation fees, registration fees and examination fees paid, including taxes and fees paid by the attorney in fact of a reciprocal or interinsurance exchange to the extent attributable to the principal business as such attorney in fact, under any law of this state.

The facts which give rise to this opinion are that in a fiscal year the expenditures, exclusive of examination costs, of the Division of Insurance exceed the amount it collects pursuant to § 374.230 by approximately \$500,000.

Our chief concern is to determine the legislative intent from the plain language contained in the appropriate statutory provisions. The plain language of § 374.260 says that the Director of the Division of Insurance is required to assess the amount by which expenditures, exclusive of examination costs, exceed collections against insurance companies under § 374.230. We simply cannot ignore this language.

The assessment under § 374.260 is not an allowable deduction from premium tax in that it is not an enumerated credit which is

Honorable James Antonio

set out in § 148.400. We, therefore, believe that such assessment is not to be credited against the premium taxes.

It is the opinion of this office that the Division of Insurance should assess against insurance companies the excess expenses of the Division over the amount collected under § 374.230 as required under § 374.260. The Director of the Division should consider only those fees specifically enumerated in § 374.230 in making his assessment and should not consider various broker's and miscellaneous fees which are not enumerated in that section in making his assessment. It is the further opinion of this office that such assessment is not a credit against the premium tax as provided in § 148.400.

Very truly yours,

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

March 30, 1979

OPINION LETTER NO. 26

Honorable James F. Antonio  
State Auditor  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Dr. Antonio:

This is in response to a request from your predecessor for an opinion concerning the following question:

"Should expenses incurred by the Director of the Division of Insurance and other salaried employees of the division in conducting examinations be paid by insurance companies directly to the director or other salaried employees or should the insurance companies pay such amount to the state and the director or other salaried employees be reimbursed by the state?"

We understand from the request that the Director of the Division of Insurance and other salaried employees of the Division sometimes participate in the examination of insurance companies. In such instances the expenses incurred by the Director or other salaried employees are paid by the insurance company directly to the Director or other salaried employees.

Section 374.160, RSMo 1969, provides as follows:

"All the expenses of the insurance division now or hereafter incurred and unpaid, or that may be hereafter incurred including the salaries of the superintendent and

Honorable James F. Antonio

deputy superintendent, except the expenses of examinations, valuations or proceedings against any company, and for winding up, dissolving or settling the affairs of companies, which expenses are to be paid by the company, or as provided by the law, shall be paid monthly out of the amount appropriated by law from the insurance division fund, on warrants issued upon such fund by the state auditor on vouchers approved by the superintendent and comptroller. The state shall not be responsible in any manner for the payment of any such expenses, or of any expenses of this division, or any charges connected therewith."

Section 374.220.1, RSMo 1969, provides:

"The expenses of proceedings against insurance companies, and examinations of the assets or liabilities and valuations of policies of insurance companies doing business in this state, shall be assessed by the superintendent upon the company proceeded against or examined, or whose policies have been valued, and shall be in the first instance paid by such company, on the order of the superintendent, directly to the person or persons rendering the service."

Section 374.220.4, RSMo 1969, provides:

"When any examination or valuation is made by the superintendent in person or by any salaried employee of the division of insurance, the cost of making the same shall be certified to the collector of revenue for collection."

Section 1.090, RSMo 1969, requires, as a rule of construction, that words and phrases shall be taken in their plain or ordinary and usual sense. The object is to ascertain the intent of the legislature when examining the words of the statute. In the construction of legislative enactments, the intent of the legislature controls. It is our obligation to ascertain legislative intent as the primary goal and to give effect to the legislative intent expressed in the statute. State ex rel. Ashcroft v. Union Electric

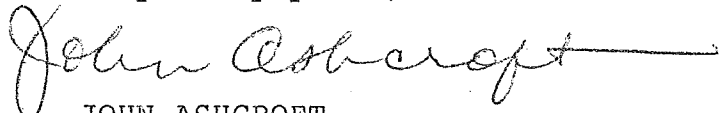


Honorable James F. Antonio

Company, 559 S.W.2d 216 (Mo.Ct.App. at K.C. 1977); Mark Twain Cape Girardeau Bank v. State Banking Board, 528 S.W.2d 443 (Mo.Ct.App. at St.L. 1975).

The plain language of the above-cited sections clearly indicates that the cost of the examination incurred by the Director of the Division of Insurance or other salaried employees of the Division should be paid to the Collector of Revenue. Such cost should not be paid to the Director of the Division of Insurance or to his salaried personnel.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", followed by a horizontal line extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

65101

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

February 20, 1979

OPINION LETTER NO. 27

Honorable Dale K. Miller  
Prosecuting Attorney  
Andrew County  
P. O. Box 315  
Savannah, Missouri 64485

Dear Mr. Miller:

You have requested an official opinion from this office on the following question:

"May the Board of County Health Center Trustees in a County of the Third Class enter into a contract with the County Court of said County for the purpose of operating an ambulance service, with a portion of the funds for said operation coming from the County Health Center and part from payments made by those individuals using the service?"

The statutory powers and duties of a county health center include the following:

"The public health center is established, maintained and operated for the improvement of health of all inhabitants of said county . . ." §205.050, RSMo.

Honorable Dale K. Miller

"The board of county health center trustees shall not enter into contracts for the private practice of medicine, nor shall any of its personnel practice medicine nor dispense drugs, vaccines or serums for personal gain, nor shall its facilities be used for such purpose in any way except as it may be necessary and agreed upon between the board and county court or courts for the care of the indigent for whom the court or courts may be responsible, or except in furtherance of diagnostic and communicable disease control programs." §205.060, RSMo.

"Each school of healing licensed by the state of Missouri shall have equal rights in said health center." §205.120, RSMo.

Although the transportation of persons who are sick, injured, wounded, diseased or otherwise incapacitated or helpless has a relationship to the "health" of citizens, we do not believe that the legislature has intended to confer the power to operate or maintain ambulance services upon health centers or their governing boards. We note instances where the legislature has expressly conferred such power upon particular governmental entities: County, city, town, or village, §67.300, RSMo (L.Mo. 1967, p. 140); Fire protection district, §321.225, RSMo (L.Mo. 1969, p. 430); Ambulance district, §§190.005 et seq., RSMo (L.Mo. 1971, p. 231).

The Missouri Supreme Court has commented thusly as to one of the above laws:

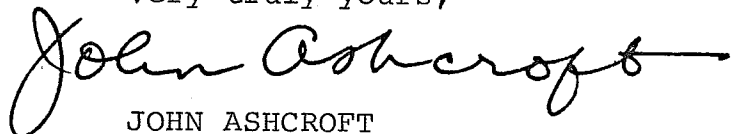
". . . Section 67.300 is an enabling Act granting authority for activities not previously permitted cities of the fourth class, namely, operation of ambulance services; however the authority conferred may not be extended beyond the legislative intentment. 'A municipal corporation such as [plaintiff] is a creature of the legislature, possessing only those powers expressly granted, or those necessarily or fairly implied in or incidental to express grants, or those essential to the declared

Honorable Dale K. Miller

objects of the municipality. Any reasonable doubt as to whether a power has been delegated to a municipality is resolved in favor of nondelegation.' . . ." City of Raytown v. Danforth, 560 S.W.2d 846, 848 (Mo. Banc 1977).

Attorney General's Opinion No. 290, December 5, 1968, Brewer, concluded that a county's power to maintain and improve a hospital (§205.200) for the benefit of the greatest number of the inhabitants and persons falling sick, being injured or maimed in the county (§205.270) conferred by implication the power to operate or maintain an ambulance service directly connected with services to the hospital's patients. However, we do not think the operation or maintenance of an ambulance service can be regarded as so necessary to the activities of a county health center that such power should be deemed fairly implied from their present express statutory powers.

Very truly yours,

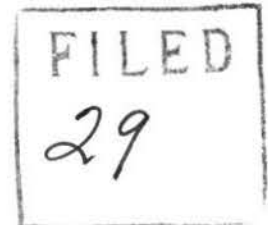
A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

Answer by Letter - Engel

OPINION LETTER NO. 29

March 5, 1979



Honorable Hardin C. Cox  
State Senator, 12th District  
Room 416, State Capitol  
Jefferson City, Missouri 65101

Dear Senator Cox:

This letter is in answer to your request for a legal opinion, which reads as follows:

"Is it permissible for a superintendent of schools, for a six-director school district, to hold an elective office and/or an office or offices in a political party?"

Section 168.201, RSMo. Supp. 1975, provides:

"The board of education in all districts except metropolitan districts may employ and contract with a superintendent for a term not to exceed three years from the time of making the contract, and may employ such other servants and agents as it deems necessary, and prescribe their powers, duties, compensation and term of office or employment which shall not exceed three years. It shall provide and keep a corporate seal."

The duties of the board of education of a six-director school district are numerous and are detailed in various places throughout the statutes. Basically, they are to oversee the day to day functioning of the school district, and to report on the activities of the school district to various higher authorities.

In general, villages and other municipal corporations have no power to control or affect the operation of school districts. Frequently, a school district, such as the one considered here, encompasses more than one town. These school districts are funded and operated completely apart from any control by a village that it encompasses.

According to our information, the person in question is the "mayor" of Fortescue, Missouri, which is a village. It is assumed that the person referred to as "mayor" is actually the chairman of the board of trustees of the village, and he will be referred to as such herein. Section 80.090, RSMo. 1969, provides the powers and duties of the trustees of villages, and reads as follows:

"Such board of trustees shall have power:

(1) To pass bylaws and ordinances to prevent and remove nuisances;

(2) To prevent, restrain and suppress bawdyhouses, gambling houses and other disorderly houses within the limits of such town, or any addition to said town, or any commons thereto attached;

(3) To restrain and prohibit gambling;

(4) To license, tax and regulate merchants, peddlers and auctioneers, and to regulate and prohibit the sale or giving away of intoxicating liquors under merchants' licenses in such towns; provided, that druggists and pharmacists may sell upon prescriptions, as is provided by law;

(5) To provide for licensing and regulating and prohibiting dramshops and tippling houses, public shows, circuses, theatrical and other amusements, to the distance of one-half mile from the corporate limits of such town;

(6) To prohibit the firing of firearms;

(7) To prevent furious and unnecessary riding or driving of any horse or other animal within such town, or such part thereof as they may think proper;

(8) To establish night watches and patrols;

(9) To erect and maintain calaboooses, poorhouses and hospitals;

(10) To prevent the introduction and spreading of contagious diseases;

(11) To organize and maintain fire companies;

(12) To prevent and extinguish fires;

(13) To establish fire limits and to define the limits within which wooden buildings, stables, manufactories and other structures which may increase the danger of calamities from fires shall not be erected;

(14) To establish and provide for wells, cisterns and pumps;

(15) To regulate the construction of chimneys and flues thereof, and to appoint an inspector of chimneys and flues, and to define the duties and fix the compensation thereof;

(16) To establish and regulate markets;

(17) To erect and repair bridges and culverts;

(18) To erect, repair, and regulate wharves and the rate of wharfage;

(19) To regulate the landing and stationing of steamboats, rafts and other water craft;

(20) To provide for the inspection of lumber, building material and for provisions to be used or offered for sale in such town, or to be exported therefrom;

(21) To regulate the storage of gunpowder and other combustible materials;

(22) To regulate the slaughtering of animals;

(23) To license, tax, regulate and prohibit ball and tenpin alleys, billiards and pool tables, or other tables upon which games are played for pay or amusement;

(24) To license, tax, regulate and prohibit all other games for pay or amusement; provided, that no permission shall be given to bet money, property or other thing upon any game, or to license any such game;

(25) To license, tax and regulate wagons and teams, livery, sale and feed stables, and any vehicle or team kept or let for pay;



(26) To license, tax and regulate hay, grain and stock scales;

(27) To levy and collect taxes upon property and the licenses herein provided for;

(28) To borrow money for the improvement of such town, or to supply the same with water or gas;

(29) To open and form public squares, avenues drains and sewers, and to keep the same cleaned and in order;

(30) To locate and lay out new streets and alleys;

(31) To establish the grade of streets and alleys;

(32) To determine and fix the width of sidewalks; and the material of which the same may be built; and

(33) To widen streets heretofore laid out in such town, and to appoint three commissioners to assess the damages done to property upon which such street or alley may be located, deducting from such damages the amount of benefit, if any, such street or alley, or the widening thereof, may be to the same; but all assessments so made by the commissioners shall be reported, as soon as may be, to the board of trustees, who may approve or reject the same; and all persons aggrieved by such assessment may, within fifteen days after receiving notice of such assessment, appeal therefrom to the next circuit court of the county, by giving notice of such appeal to said board of trustees at least fifteen days before the first day of the term to which said appeal is taken; and the circuit court, on such appeal, shall be possessed of the case and proceed therewith to final judgment, according to the law. In all cases of assessment or appeal, the land to be used for or occupied by the street or alley may be taken possession of for the purpose of establishing and improving such street or alley, as soon as the amount of damages so assessed shall be tendered to the owner;

(34) Also to open, clear, regulate, grade, pave or improve the streets and alleys of such town;

(35) To provide for lighting the streets and erecting lamps thereon;

(36) To regulate and prohibit the running at large of dogs, hogs, cattle and horses in the streets and alleys of such town, and to impose and collect tax on dogs not exceeding one dollar each;

(37) To impose and appropriate fines for forfeitures and penalties for breaking or violating their ordinances;

(38) To levy and collect taxes;

(39) To regulate the enclosure of any common field belonging to or within the limits of such town, and,

(40) To pass such other bylaws and ordinances for the regulation and police of such town and commons thereto appertaining as they shall deem necessary, not repugnant to and contrary to the laws of the state."

In addition to the duties required by the above-quoted section, the village trustees have other official duties to perform, as will be noted from other sections of the statutes, to which we shall refer.

Section 80.130, RSMo. 1969, gives the trustees the power to sprinkle and oil the streets of the village.

Section 80.170, RSMo. 1969, gives the trustees power to further restrain domestic animals, and §80.180, RSMo. 1969, gives the trustees powers to effect sidewalk construction and repair.

Section 80.210, RSMo. 1969, requires the chairman of the board of trustees to make a semi-annual report to be published publicly.

Section 80.240, RSMo. 1969, gives the trustees power to appoint an assessor, collector, marshal, treasurer and such other officers, servants and agents as may be necessary, and remove them from office and prescribe their duties.

Having set out the statutory powers of school boards, school superintendents and chairman of village board of trustees, we will now proceed to examine whether these duties are in conflict.

At common law there was no limitation upon the number of offices one person could hold at the same time, so long as such offices were compatible. Of course, one could not hold two or more incompatible offices at the same time, for the reason this was against public policy. This principle was discussed by the court in the case of State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636 (1896). In that opinion, at pp. 338-339, the court said:

"\* \* \* At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two; some conflict in the duties required of the officers, as where one has some supervision of the other, is required to deal with, control or assist him.

It was said by Judge FOLGER in People ex rel. v. Green, 58 N.Y. loc. cit. 304: 'Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature of the relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. \* \* \*"

Upon comparison of the possible duties of superintendent of a six-director school district with those of a village chairman of the board of trustees, as shown by the statutes referred to above, and keeping in mind the principle of law regarding incompatibility of offices discussed in State ex rel. Walker v. Bus, supra, it is noted the duties of superintendent of a six-director school district are not inconsistent, repugnant, or opposed to the duties of chairman of a village board of trustees, and that the former is not subordinate to the latter office in any way. Hence, said offices are not incompatible.

We are unable to find any constitutional or statutory requirements that the superintendent of a six-director school district or the chairman of a village board of trustees shall not hold any other office or employment during the term of office for which he was elected or appointed.

We are also unable to find any constitutional or statutory requirements that a superintendent of a six-director school district or the chairman of a village board of trustees not hold any office in a political party during the term of office for which he was elected or appointed. There is no prohibition in the law against a superintendent or a chairman of the board of trustees of a village holding office in a political party.

Very truly yours,

JOHN ASHCROFT  
Attorney General

ACCOUNTANTS: Government employees doing "accounting work" which does not rise to the level of activity governed by Chapter 326, RSMo 1978, are not engaged in the "practice of public accounting" as that term is used in Section 326.210, RSMo 1978.

September 24, 1979

OPINION NO. 30

Mr. James C. Butler  
Director, Department of Consumer  
Affairs, Regulation and Licensing  
505 Missouri Boulevard  
Jefferson City, Missouri 65101

Dear Mr. Butler:

This opinion is issued in response to your request concerning the following question:

Is a government employee who performs accounting work in the 'practice of public accounting' as the term is used in Section 326.210 RSMo 1978?

Section 326.210, RSMo 1978, states in pertinent part:

Permits to engage in the practice of public accounting shall not be issued to the holder of a certificate issued by this state . . . until such person shall have had two years' experience acceptable to the board in the practice of public accounting . . . .

Section 326.210 seeks to establish the experience required of one seeking a permit to engage in the practice of public accounting.

The question posed asks whether government employees engaged in accounting work (emphasis added) are in the "practice of public accounting" as the latter term is used

Mr. James C. Butler

in Section 326.210, RSMo 1978. Chapter 326, Accountants, RSMo 1978, concerns itself with more than mere "accounting work." In regulating those individuals permitted to designate themselves as certified public accountants, the chapter limits who may give an opinion to be relied upon by third parties as to the reliability or fairness of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises. Such opinion is to be rendered following the completion of an audit done in accordance with generally accepted accounting and auditing standards. Internal "accounting work" done by a government employee does not rise to the level of activity governed by Chapter 326 and cannot be work deemed to be the "practice of public accounting" as that phrase is used in Section 326.210, RSMo 1978.


Internal governmental accounting which fails to rise to a level of work within the purview of Chapter 326 then cannot count toward the experience requirement. This opinion expresses no conclusion regarding work involving audit and/or attestation done by government employees.

Section 326.210, RSMo 1978, specifically provides that the requisite experience shall be "acceptable to the board." Therefore, any decision as to the acceptability of experience of government employees which rises above the threshold levels of Section 326 should be made by the Missouri State Board of Accountancy.

#### CONCLUSION

It is the opinion of this office that government employees doing "accounting work" which does not rise to the level of activity governed by Chapter 326, RSMo 1978, are not engaged in the "practice of public accounting" as that term is used in Section 326.210, RSMo 1978.

Very truly yours,



JOHN ASHCROFT  
Attorney General



SCHOOLS:  
FEDERAL AID:  
CONSTITUTIONAL LAW:

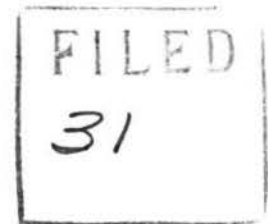
(1) Federal funds paid directly to the Board of Education of the City of St. Louis under the provisions of the Emergency School Aid Act

(ESAA) constitute public funds which are subject to the spending proscriptions of the Missouri Constitution. (2) The Missouri Constitution prohibits the use of public school personnel paid with ESAA funds to provide teaching services to children attending sectarian schools on the premises of the sectarian schools during the regular school day.

OPINION NO. 31

January 10, 1979

Honorable DeVerne L. Calloway  
Representative, District 81  
4309 Enright  
St. Louis, Missouri 63108



Dear Representative Calloway:

This official opinion is issued in response to your request for a ruling on the following questions:

- "1. Do federal funds paid directly to the Board of Education of the City of St. Louis under the provisions of the Emergency School Aid Act (ESAA) constitute public funds which are subject to the spending proscriptions contained in Missouri law?
- "2. If so, does Missouri law prohibit the use of public school personnel paid with ESAA funds to provide teaching services to children attending sectarian schools on the premises of the sectarian schools during the regular school day?"

The facts surrounding this request are as follows:

During the 1976-77 and 1977-78 school years, the St. Louis School District received federal funds under the provisions of the Emergency School Aid Act, (ESAA), 20 U.S.C. 1601, et seq., for the purpose of reducing minority group isolation in the schools. Such funds have been utilized for the support of the district's Magnet



Honorable DeVerne L. Calloway

School Program. The Magnet School Program involves the establishment of a number of specialized elementary and secondary schools in the district, each having a particular area of emphasis (i.e. Math/Science, Performing Arts, Basic Education, etc.) and each having an integrated student population. ESAA funds have again been awarded to the district for the 1978-79 school year.

Unlike funds paid under the provisions of Title I of the Elementary and Secondary Education Act of 1965, ESAA funds are not paid to the state and are not deposited in the state treasury. Rather, the U.S. Department of Health, Education and Welfare (HEW) sends such funds directly to the local education agency (the school district, in this case) and they are deposited in and flow through the accounts at the local school district.

ESAA requires a local education agency that receives funds to provide for the participation of nonpublic school students and staff on an "equitable basis." 20 U.S.C. 1609(a)(12). In the past, the St. Louis Public School System has met the nonpublic participation requirement by establishing magnet school centers on the premises of schools operated by the Archdiocese of St. Louis, an arm of the Catholic Church, during the regular school day. The district has provided program coordinators, teachers, and teacher aides to the nonpublic magnet centers on a part-time basis. Such individuals were district employees and spent the remainder of their time during the school day in public school settings. In-service sessions for magnet school teachers employed by the Archdiocese have also been provided and non-expendable equipment and supplies have been loaned to the Archdiocese for use in the centers. Also, transportation is provided for field trips.

The requirement for equitable nonpublic school participation may be waived where the local education agency is prohibited by law from providing for the participation of nonpublic school children and staff. If a waiver, or "bypass," is instituted, HEW is obligated to provide other arrangements for nonpublic participation. 20 U.S.C. 1611(c)(1); 45 CFR § 185.42(i). You have indicated that the St. Louis School District plans to continue its nonpublic school programming unless it is advised in this opinion that such continuation would be unlawful.

Any discussion of the questions you have raised must begin with a careful examination of Wheeler v. Barrera, 417 U.S. 402 (1974) and Mallory v. Barrera, 544 S.W.2d 556 (Mo.Banc 1976). These cases involved federal funds granted to states under the Elementary and Secondary Education Act, 20 U.S.C. 241a, et seq. (hereinafter referred to as Title I) for the purpose of aiding local school districts in meeting the special needs of educationally deprived and economically disadvantaged children. Title

Honorable DeVerne L. Calloway

I, like ESAA, also provides for nonpublic school participation in these federally assisted programs.

In Wheeler, the United States Supreme Court ruled that Title I evinced a congressional purpose to accommodate rather than preempt state law and that therefore, the question of whether the federal funds were subject to Missouri's constitutional spending proscriptions was to be determined under state law. At the time the Supreme Court heard the case, this question had not been definitively resolved at the state level.

In Mallory, the Missouri Supreme Court did provide a resolution, stating as follows, 544 S.W.2d at 561:

"Title I funds are obviously 'public' funds. Speaking of these funds as 'federal' to distinguish them from 'state' funds does not alter their character as public funds. Nor does the fact that this is 'federal aid' make it any the less public funds.

"[1-3] We are inclined to the view, and hold, (1) that when these funds are paid to the state, as required by the Act (20 U.S.C., § 241g(a)(1)), they must be deposited in the state treasury; (2) that when so deposited, these funds are held by the state in trust for the uses and purposes specified in the Title I program approved by the Federal Commissioner, and may be appropriated and used by the state for such of those purposes as are not proscribed by the laws of this state; (3) that that part of these funds in a Title I project which has been approved by the Federal Commissioner for use in a free public school is 'money donated to [a] state fund for public school purposes' within the meaning of the laws of Missouri; (4) that the use of any part of Title I funds by the state to provide teaching services to elementary and secondary school children on the premises of parochial schools would constitute the use of public funds (a) in aid of a denomination of religion proscribed by Art. I, § 7; and (b) to help to support or sustain a school controlled by a sectarian denomination proscribed by Mo.Const. Art. IX, § 8, Harfst v. Hoegen, 349 Mo. 808, 163 S.W.2d

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609, 613-614[8, 10] (Mo.banc 1942); Berghorn v. Reorganized School District No. 8, 364 Mo. 121, 260 S.W.2d 573, 582-583 (1953); Paster v. Tussey, 512 S.W.2d 97 (Mo.banc 1974)."

The Barrera cases thus made it clear that state law was not to be preempted by Title I, that federal funds are considered public funds when they come into the state, and that the use of those funds to provide on-premises instruction to parochial school children was violative of the Missouri Constitution.

The facts presented in your opinion request present at least two distinctions from the Barrera cases. First, the federal funds in question flow from the ESAA rather than Title I. Secondly, the federal grants flow directly to local school districts and do not pass through the state treasury. We must examine these distinctions in order to determine if they mandate a result different from that reached in the Barrera cases.

Before proceeding to that task, however, one preliminary issue must be considered. In Wheeler the United States Supreme Court held squarely that state law was to govern the propriety or constitutionality of expenditures under Title I for nonpublic school participation. In so ruling, the Court considered the legislative history of Title I and concluded that Congress intended that state law be accommodated rather than preempted. It is our opinion that the same conclusion is appropriate in connection with the ESAA, at least insofar as the nonpublic school issue is concerned. As mentioned earlier, the ESAA provides, 20 U.S.C. 1611(c)(1):

"If a local educational agency in a State is prohibited by law from providing for the participation of children and staff enrolled or employed in private nonprofit elementary and secondary schools as required by paragraph (12) of section 1609 (a) of this title, the Assistant Secretary may waive such requirement with respect to local educational agencies in such State and, upon the approval of an application from a local educational agency within such State, shall arrange for the provision of services to such children enrolled in, or teachers or other educational staff of, any nonprofit private elementary or secondary school located within the school district of such agency if the participation of such children and staff would assist in

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achieving the purpose of this chapter stated in section 1601(b) of this title or in the case of an application under section 1607(c) of this title would assist in meeting the needs described in that subsection.  
. . ."

By expressly allowing for the Secretary to "bypass" the local school officials in the provision of services, Congress has indicated its intention to accommodate, rather than to preempt state law. We further note that the regulations promulgated under the ESAA require that local educational agencies, when applying for a "bypass," shall furnish the Assistant Secretary with copies of the "laws, rules, court decisions, or opinions of State legal officers as are necessary to set out the basis for such prohibition," 45 CFR § 185.42(i). It is clear, therefore, that state law should be used to determine whether or not a local school district may provide on-premises instruction to private school pupils in meeting the requirements of the ESAA.

We turn now to the question of whether the Mallory case controls in the situation here presented. Title I and the ESAA differ in several respects. The purpose of the former is to provide special educational services to educationally deprived children living in low-income areas, and the law is largely silent on the precise programs or projects which local school officials may use to achieve this purpose. Title I grants are awarded by HEW to state educational agencies, which in turn distribute the funds to local school districts who make application in accordance with Title I requirements. Typically, Title I money is used to provide teachers, equipment, and supplies for remedial and enrichment programs for disadvantaged students.

The purpose of the ESAA is to eliminate or prevent minority group isolation in the schools and to aid school children in overcoming the educational disadvantages of such isolation. Grants are made to local school districts upon application to the Assistant Secretary of HEW, and the state education agency is given only an opportunity to offer recommendations to and comments on the application. The activities authorized by the act include special remedial services for children involved in a desegregation plan, teacher training, counseling, community activities, magnet schools, and other innovative interracial programs. In the present case, the federal assistance received by the St. Louis School District is used for its magnet school program, which involves teaching and other services in schools controlling racial enrollments to promote integrated education. We note that the ESAA's requirement of nonpublic school participation does not extend to any private schools which



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discriminate on the basis of race or which serve as an alternative to children seeking to avoid desegregation in the public schools.

Both Title I and the ESAA require that the funded programs be operated and administered by the local school district; all federal funds and property derived therefrom must remain under the control of the local school district (20 U.S.C. 241e(a)(3); 20 U.S.C. 1609(a)(5)).

In noting the differences and similarities between Title I and the ESAA, we perceive no reason to believe that ESAA funds are to be treated any differently than Title I funds once those funds come into the state or its political subdivisions. In other words, we believe that the Missouri Supreme Court would not change the method of analysis used in Mallory v. Barrera had it been confronted with ESAA funds rather than Title I funds.

Thus, we reach the pivotal issue of whether federal funds paid directly to a local board of education pursuant to the ESAA are public funds. As mentioned above, the Missouri Supreme Court ruled in Mallory that under the facts of that case, federal grants were public funds when they were received and deposited in the state treasury. The court also stated, 544 S.W.2d at 561:

"Title I funds are obviously 'public' funds. Speaking of these funds as 'federal' to distinguish them from 'state' funds does not alter their character as public funds. Nor does the fact that this is 'federal aid' make it any the less public funds."

Section 165.011, RSMo Supp. 1977, requires that all moneys received by a school district are to be placed to the credit of one of the funds established by law for the accounting of all school money. There can be no dispute that these are public funds or accounts.

Article I, Section 7 of the Missouri Constitution provides:

"That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church,

Honorable DeVerne L. Calloway

sect or creed of religion, or any form of religious faith or worship."

Article IX, Section 8 of the Missouri Constitution provides:

"Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever."

Insofar as Mallory v. Barrera held that federal funds are to be considered public funds, its holding appears to be equally applicable to federal funds deposited directly in the accounts of the school district. So long as the Missouri Supreme Court does not exempt federal funds from the spending prohibitions of the Missouri Constitution, we must conclude that federal money flowing through the funds of a public school district may not be used in aid of a denomination of religion (Article I, Section 7) or to help support or sustain a school controlled by a sectarian denomination (Article IX, Section 8).

Another traditional legal proposition prevents the conclusion that school district funds are somehow different from state funds. It has often been held, in other contexts, that funds held by a local school district are considered the property of the state and not the private property of the school district, State ex rel. Gold v. Dunne, 421 S.W.2d 268 (Mo. 1967); School District of Mexico, Missouri, No. 59 v. Maple Grove School District, No. 56, of Audrain County, 359 S.W.2d 743 (Mo.Banc 1962); cf. Blount v. Ladue School District, 321 F.Supp. 1245 (E.D.Mo. 1970). Thus, if federal funds paid into the state treasury are considered public funds, so too would federal funds be considered public funds when paid into school district accounts.

Given this conclusion, the answer to your second question is also provided by Mallory v. Barrera, which ruled that the use of

Honorable Deverne L. Calloway

public funds to provide teaching services to elementary and secondary school children on the premises of parochial schools would violate the above-quoted constitutional provisions. Mallory v. Barrera, *supra* at 561, citing Harfst v. Hoegen, 163 S.W.2d 609, 613-614 (Mo.Banc 1942); Berghorn v. Reorganzied School Dist. No. 8, 260 S.W.2d 573, 582-583 (Mo. 1953); Paster v. Tussey, 512 S.W.2d 97 (Mo.Banc 1974). See also, Special District for Education and Training of Handicapped Children of St. Louis County v. Wheeler, 408 S.W.2d 60 (Mo.Banc 1966). The teachers in Mallory were also public school personnel paid with federal funds.

#### CONCLUSION

Based on the foregoing, it is our opinion that:

(1) Federal funds paid directly to the Board of Education of the City of St. Louis under the provisions of the Emergency School Aid Act (ESAA) constitute public funds which are subject to the spending proscriptions of the Missouri Constitution.

(2) The Missouri Constitution prohibits the use of public school personnel paid with ESAA funds to provide teaching services to children attending sectarian schools on the premises of the sectarian schools during the regular school day.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Sheila K. Hyatt.

Very truly yours,

A handwritten signature in black ink, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General



*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

March 15, 1979

OPINION LETTER NO. 33

Honorable Edward E. Ottinger  
Representative, District 101  
c/o House Post Office  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Ottinger:

This is in reply to your request for an opinion concerning the following question:

"Mr. Steven M. Geary, Supervisor, Consumer Credit, Division of Finance, Department of Consumer Affairs, Regulation & Licensing, has ruled (see attached) that Section 408.200 of the Revised Statutes of Missouri permits a lender to have outstanding at any one time, a) a traditional small loan, b) any number of small loans for single purchase of goods or services in amounts of \$2500 or more, c) an open end credit small loan where no credit card has been issued, and d) open end small loan where credit cards have been issued and while outstanding, interest on each loan may be charged at the maximum rate allowed by Section 408.100 of such revised statutes.

"Does Subsection 3 of Section 408.200, Missouri Revised Statutes, when there are outstanding at any one time, a) a loan made pursuant to Section 408.100 of \$500 or less, b) a closed end contract evidencing a loan in the principal amount of \$2500 or more

Honorable Edward E. Ottinger

where the loan proceeds are used to purchase goods or services pursuant to a single contract of purchase in amounts equal to or greater than the amount of the loan, c) an open end credit contract where no credit card has been issued, and d) an open end credit contract where a credit card has been issued, permit a lender to consider all four types of loans independently and separately for the purpose of computing interest and the maximum rates allowed by Section 408.100 of the Revised Statutes of Missouri, without regard to any other type of loan contract?"

As your request implies, recent legislative enactments have a bearing on your question. Section 408.200, RSMo Supp. 1977, reads as follows:

"1. Except as provided in subsections 2 and 3, no lender shall permit any borrower to be indebted to such lender on two or more contracts at any time for the purpose or with the result of contracting for or receiving the interest permitted by section 408.100 on more than five hundred dollars of principal (excluding interest). It shall be lawful for a lender to lend at the same or different times to the same borrower five hundred dollars or less under and at the rates permitted by section 408.100 and additional amounts at not more than ten percent per annum even though such additional amounts bring the aggregate amount outstanding to an amount in excess of five hundred dollars and whether such loan or loans be evidenced by one or more than one note or loan contract. When such aggregate principal amount outstanding exceeds five hundred dollars and is evidenced by one note or loan contract, it shall be treated as one loan and interest may be computed at the rates permitted under section 408.100 on that part of the unpaid principal balance of the total indebtedness not exceeding five hundred dollars and at no more than ten percent per annum on any remainder of such unpaid principal balance and the provisions of sections

Honorable Edward E. Ottinger

408.120, 408.130 and 408.160 to 408.180 shall apply to the full amount of the note or loan contract.

"2. As used in subsection 3,

(1) 'Open end credit' shall mean loans defined as such in the federal Consumer Credit Protection Act and regulations thereunder.

(2) 'Closed end credit' shall mean loans other than open end credit.

(3) 'Credit card' shall mean a credit device defined as such in the federal Consumer Credit Protection Act and regulations thereunder, except that as used in subsection 3 the term shall be limited to credit cards which permit the holder to purchase goods and services upon presentation to third parties, whether or not the credit card also permits the holder to obtain loans of any other type.

"3. Notwithstanding subsection 1, each note or loan contract of the following types shall be considered separately for purposes of computing the interest allowed on loans made under such contract and it shall be lawful to charge the rates permitted by subsection 1 and section 408.100 on each such contract without regard to any other loan to the same borrower:

(1) Closed end credit contracts evidencing loans in the principal amount of two thousand five hundred dollars or more for the purchase of goods or services pursuant to a single contract of purchase in an amount equal to or exceeding the amount of the loan;

(2) Open end credit contracts other than contracts under which a credit card has been issued, provided that if a lender has

Honorable Edward E. Ottinger

more than one such contract with any borrower all such contracts shall be considered together (but without regard to contracts of any other type) for purposes of computing the interest allowed on loans made thereunder;

(3) Open end credit contracts under which a credit card has been issued.

"4. Subsection 3 shall not apply to any transaction in which a single extension of credit is allocated to two or more of the categories therein described for the purpose or with the result of contracting for or receiving a higher rate of interest than would have been permitted if the loan had been made under subsection 1."

Previously, this section read:

"No lender shall permit any borrower to be indebted to such lender on two or more contracts at any time for the purpose or with the result of contracting for or receiving the interest permitted by section 408.100 on more than five hundred dollars of principal (excluding interest). It shall be lawful for a lender to lend at the same or different times to the same borrower five hundred dollars or less under and at the rates permitted by section 408.100 and additional amounts at not more than ten percent per annum even though such additional amounts bring the aggregate amount outstanding to an amount in excess of five hundred dollars and whether such loan or loans be evidenced by one or more than one note or loan contract. When such aggregate principal amount outstanding exceeds five hundred dollars and is evidenced by one note or loan contract, it shall be treated as one loan and interest may be computed at the rates permitted under section 408.100 on that part of the unpaid principal balance of the total indebtedness not exceeding five hundred dollars and at no more than ten percent per annum on any remainder of such unpaid principal

Honorable Edward E. Ottinger

balance and the provisions of sections 408.120, 408.130, and 408.160 to 408.180 shall apply to the full amount of the note or loan contract."

Clearly, the legislature intended to make a substantive change by the repeal and re-enactment of Section 408.200 in 1977. Legislative intent is gleaned from such repeal and re-enactment.

The repeal and re-enactment of Section 408.200 provides that a lender may have outstanding at any one time a traditional small loan (\$500 or less), closed end credit contracts evidencing loans in the principal amount of \$2500 or more for the purchases of goods or services pursuant to a single contract of purchase in an amount equal to or exceeding the amount of the loan, open end credit contracts where no credit card has been issued provided that if a lender has more than one such contract with any borrower all such contracts shall be considered together but without regard to contracts of any other type for the purpose of computing interest allowed on loans made thereunder, and open end credit contracts under which a credit card has been issued. These are separate loans which bear rates of interest allowed by Sections 408.100 and 408.200.1, RSMo, on each loan. In each case, the lender should look to the specific exception in the statute to determine whether this is the type of credit contract which falls within that exception.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal line extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

May 16, 1979

OPINION LETTER NO. 35

The Honorable Philip R. Pruett  
Prosecuting Attorney  
Mississippi County  
Post Office Box 449  
Charleston, Missouri 63834

Dear Mr. Pruett:

This letter is in response to the following question asked by your predecessor, Mr. Edward C. Graham:

"Can the sheriff receive mileage for serving every warrant even though several warrants are served at the same location?"

You also state:

"Mississippi County has a state weight station on I-57. The present procedure is for the highway patrol to make arrests and sign their usual ticket citing the violation. The Mississippi County sheriff or deputies go to the weight station from the Mississippi County courthouse and serve a warrant on each violator. Bonds are taken at the weight station. The usual procedure is for the sheriff or deputy to serve several warrants at once. Mileage is claimed by the sheriff or deputy for the full round trip on each warrant return."

Section 57.430, RSMo Supp. 1975, provides:

"1. In addition to the salary provided in sections 57.390 and 57.400, the county

The Honorable Philip R. Pruett

court shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed fifteen cents per mile, and actual expenses not to exceed fifteen cents per mile for each mile traveled, the maximum amount allowable to be three hundred dollars during any one calendar month in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense. When mileage is allowed, it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. When two or more persons who are summoned, subpoenaed, or served with any process, writ, or notice, in the same action, live in the same general direction, mileage shall be allowed only for summoning, subpoenaing or serving of the most remote.

"2. At the end of each month, the sheriff and each deputy shall file with the county court an accurate and itemized statement, in writing, showing in detail the miles traveled by such officer, the date of each trip, the nature of the business engaged in during each trip, and the places to and from which he has traveled. Such statement shall be signed by the officer making claim for reimbursement, verified by his affidavit, and filed by him with the county court. Whenever claim for reimbursement is made by a deputy, his statement shall also be approved in writing by the sheriff. The county court shall examine every claim filed for reimbursement, and if found correct, the county shall pay to the officer entitled thereto, the amount found due as mileage."

The Honorable Philip R. Pruett

It is quite clear that this section allows a maximum of fifteen cents for actual and necessary expenses for each mile traveled, as provided. Likewise, it is clear that this section provides for a detailed itemization of the mileage.

Therefore, it is our view that the sheriff cannot claim mileage for serving more than one warrant where several warrants are served at the same time at the same location.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal line extending to the right.

JOHN ASHCROFT  
Attorney General



January 26, 1979

OPINION LETTER NO. 36  
Answer by Letter - JONES

Mr. Edwin M. Bode  
Executive Secretary  
Missouri State Employees'  
Retirement System  
900 Leslie Blvd.  
Jefferson City, Missouri 65101



Dear Mr. Bode:

This letter is to acknowledge receipt of your request for an opinion from this office which reads as follows:

"1. Is the Medical Care Plan of the Board of Trustees of the Missouri State Employees' Retirement System a 'rule' within the provisions of Section 535.010, RSMo?

"2. If the Medical Care Plan is not a rule, how may the Board of Trustees rescind the provisions of the Medical Care Plan which are currently published in the Code of State Regulations as rules?

"3. If the Medical Care Plan is a rule, then advice is requested as to the extent to which items in the Missouri State Medical Care Plan are required to be published?"

Subsections 1 and 2 of Section 104.515, RSMo Supp. 1973, provided in part that the Board of Trustees of the Missouri State Employees' Retirement System should provide or contract for insurance benefits to cover hospital, surgical and medical expenses

Mr. Edwin M. Bode

for employees under Sections 104.310 to 104.550, RSMo. Subsection 3 of Section 104.515, RSMo Supp. 1973, provided in part that the board should establish and implement a program as provided in subsections 1 and 2 and the board should establish rules of eligibility for participation in the program. Subsection 5 of Section 104.515, RSMo Supp. 1973, provided in part that commencing on August 13, 1972, the state would contribute ten dollars per month per employee for hospital, surgical, medical and life insurance benefits. As a result, it is our understanding that the board of trustees adopted "the Missouri State Medical Care Plan," which became effective on or about April 1, 1973. In general, the plan establishes various hospital, surgical and medical expense benefits available to participating employees and their dependents. The foregoing statutory provisions were amended in 1976 to include members of the judicial retirement system and to provide that commencing on September 1, 1976, the state would contribute twelve dollars per month per employee. Senate Bill No. 497, as recently enacted by the Second Regular Session of the 79th General Assembly and signed into law by the Governor, provides in part for the repeal of Section 104.515, RSMo Supp. 1977, relating to insurance benefits for certain employees, officials and judges of this state, and enacts in lieu thereof two new sections relating to the same subject with an effective date. The statutory provisions previously referred to are reenacted without change. However, the new legislation provides in part for additional coverage for certain employees and their dependents, that in addition to the state contribution of twelve dollars per month, the state shall contribute the additional amounts required, as determined by the board, to fully fund hospital, surgical, medical and life insurance benefits for participating employees, with an effective date of January 1, 1979.

In connection with the above, it is further our understanding that the Missouri State Medical Care Plan has been filed with the office of the Secretary of State and that the provisions of the Plan are currently published in the Code of State Regulations as rules. In this regard, subdivision (4) of Section 536.010, RSMo Supp. 1976, defines the term "rule" as follows:

"(4) 'Rule' means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of an existing rule, but does not include:

Mr. Edwin M. Bode

(a) A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof;

(b) A declaratory ruling issued pursuant to section 536.050, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts;

(c) An intergovernmental, interagency, or intraagency memorandum, directive, manual or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof;

(d) A determination, decision, or order in a contested case;

(e) An opinion of the attorney general;

(f) Those portions of staff manuals, instructions or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the state;

(g) A specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, or other fees;

(h) A statement concerning only the physical servicing, maintenance or care of publicly owned or operated facilities or property;

Mr. Edwin M. Bode

(i) A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals;

(j) A decision by an agency not to exercise a discretionary power;

(k) A statement concerning only inmates of an institution under the control of the division of corrections or the division of youth services, students enrolled in an educational institution, or clients of a health care facility, when issued by such an agency;

(l) Statements or requirements establishing the conditions under which persons may participate in exhibitions, fairs or similar activities, managed by the state or an agency of the state;

(m) Income tax or sales tax forms, returns and instruction booklets prepared by the state department of revenue for distribution to taxpayers for use in preparing tax returns."

Upon due consideration, it is our view that the Medical Care Plan of the Board of Trustees of the Missouri State Employees' Retirement System is an agency statement of general applicability that implements, interprets, or prescribes law or policy. In addition, the Medical Care Plan is funded in part by the state of Missouri. It is further our understanding that retired individuals are participating in the Missouri State Medical Care Plan who are no longer actively employed by the state of Missouri. Under such circumstances it is our view that the implementation of the Medical Care Plan is not alone for the benefit of state employees, but is a matter in which the public has an interest as well. Cf. Department of Air Force v. Rose, 425 U.S. 352, 96 S.Ct. 1592, 48 L.Ed.2d 11 (1976). There is also authority for the proposition that the "internal management" exception to the definition of the term "rule" should be given a narrow construction. Burke v. Children's Services Division, 552 P.2d 592 (Ore. 1976). Therefore, in response to your first question, it is our opinion that the Medical Care Plan of the Board of Trustees of the Missouri State Employees' Retirement System constitutes a "rule" within the provisions of Section 536.010, RSMo Supp. 1976, and that no response is necessary to your second question.

Mr. Edwin M. Bode

In regard to your last question, it is our view that items presently in the Missouri State Medical Care Plan are required to be published.

Sincerely,

JOHN ASHCROFT  
Attorney General

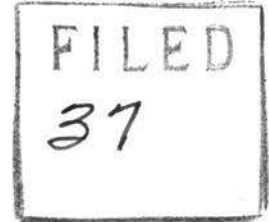
LIQUOR:

"Sacramental wines" are not included in the definition of "intoxicating liquor" as used in Section 311.020, RSMo 1969, and that such wines are not subject to the licensing and regulatory provisions of Chapter 311, RSMo.

OPINION NO. 37

January 17, 1979

Honorable Al Mueller  
State Senator, 6th District  
Senate Post Office  
Capitol Building  
Jefferson City, Missouri 65102



Dear Senator Mueller:

This is in response to your request for an official opinion of this office concerning the question of whether "'intoxicating liquor' used for sacramental purposes is subject to the regulatory provisions of Chapter 311, RSMo?"

Section 311.050, RSMo 1969, provides as follows:

"It shall be unlawful for any person, firm, partnership or corporation to manufacture, sell or expose for sale in this state intoxicating liquor, as defined in section 311.020, in any quantity, without taking out a license."

The term "intoxicating liquor" as used in Chapter 311 is defined in Section 311.020, RSMo 1969. This statute provides:

"The term 'intoxicating liquor' as used in this chapter, shall mean and include alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt, or other liquors, or combination of liquors, a part of which is spirituous vinous, or fermented, and all preparations or mixtures for beverage purposes, containing in excess of three and two-tenths percent of alcohol by weight."

Honorable Al Mueller

The term "person" as used in Chapter 311, is defined in Section 311.030 as:

". . . any individual, association, joint stock company, syndicate, copartnership, corporation, receiver, trustee, conservator, or other officer appointed by any state or federal court."

Any person who sells intoxicating liquor in Missouri must also pay a tax on the liquor sold. Section 311.550, RSMo Supp. 1975, provides as follows:

"In addition to all other licenses and charges, there shall be paid to and collected by the director of revenue charges as follows:

\* \* \*

"(2) For the privilege of selling wines, the sum of thirty cents per gallon."

In many instances, intoxicating liquors used for sacramental purposes are awarded a unique status exempt from the classification of other liquors. See People v. Marquis, 291 Ill. 121, 125 N.E. 757, 8 A.L.R. 874 (1919); California Wine Ass'n. v. Doran, 28 F.2d 81 (1928); Tennant v. F. C. Whitney & Sons, 133 Wash. 581, 234 P. 666 (1925). In the absence of such express exemption, it is necessary to ascertain the legislative intent in the enactment of the legislation.

"In construing statutes, the court must attempt to ascertain the intention of the Legislature and determine the object and purpose of that intention from the words used in the statute." In re Dugan's Estate, 309 S.W.2d 137 (Spr.Ct.App. 1957) Syllabus No. 7.

"When called upon to construe a statute, court's first and foremost duty is to ascertain and give effect to legislative intent expressed in statute." Corder v. Corder, 546 S.W.2d 798 (Mo.Ct.App. at K.C. 1977) Syllabus No. 7.

An interpretation of the effect of prohibition statutes on sacramental wines was addressed in De Hasque v. Atchison, T. & S. F.Ry. Co., 68 Okla. 183, 173 P. 73 (1918). In this case, there



Honorable Al Mueller

was no express exception for such wines in the relevant statutes. The court held that the prohibition of the sale and transportation of intoxicating liquors does not apply to wine which is to be used solely for sacramental purposes, even though such wine if drunk in sufficient quantities will produce intoxication. The court stated:

"General terms of the statutes or the Constitution must be construed in the light of their common ordinary usage and meaning. While it appears the altar wine in question is intoxicating, if drunk in sufficient quantities, yet it can hardly be said, if seems to us, that the term 'intoxicating liquors,' as commonly used in prohibition statutes, includes such wine when used in divine worship. The object and purpose of prohibition statutes is to prevent the intemperate use of intoxicating liquors with the attending and consequential evils. The use of wine in this sacred service forms no part of this evil." Id. at p. 75.

An examination of the Chapter 311 statutes quickly reveals that liquor containing over three and two-tenths percent alcohol which is to be used for beverage purposes is considered to be intoxicating liquor and therefore subject to the Liquor Control Laws of Missouri. The issue then becomes whether or not wines used for sacramental purposes are considered to be beverages as defined in Section 311.020.

The term beverage has been defined to include the following:

Webster's defines a beverage as:

"1. Liquid for drinking: esp. such liquid other than water (as tea, milk, fruit juice, beer) usu. prepared (as by flavoring, heating, admixing) before being consumed . . ."

In F. W. Woolworth Co. v. State, 72 Okl.Cr. 125, 113 P.2d 399, 401 (1941), the court stated:

"After a consideration of all the authorities recited in the respective briefs of the parties hereto and others not cited in the briefs, it is our conclusion that the definition of the term 'capable of being used as a beverage,'



Honorable Al Mueller

as contemplated by the Legislature in the passage of the act here involved, means a liquid that is reasonably capable of being drunk either for the pleasure of drinking or its after effect, and does not apply to a liquid that is possible to swallow, but not reasonably fit or palatable. Such question is not to be determined by the name given to a liquid, but by the facts in each particular case."

In Gue v. City of Eugene, 53 Or. 282, 100 P. 251, 256 (1909), the court stated:

"The use of liquor as a beverage,' . . . 'does not mean simply that the same is to be drunk, but the word "beverage" is used to distinguish the act of drinking liquor for the mere pleasure of drinking from its use for medicinal purposes.' The phrase, 'for beverage purposes,' as used in the complaint, signifies a sale of malt liquor to a person in order to gratify an appetite for intoxicants, or for the mental exaltation or for the physical effect which the imbibing of a stimulant immediately affords, as contradistinguished from a sale of such liquor for any of the objects authorized by the section of the ordinance under consideration. The complaint, in our opinion, sufficiently negatived any lawful sale of the liquor specified."

It is readily apparent that sacramental wines used in religious services are not being consumed for physical or mental exaltation but rather as an inherent part of a religious practice. The wine is being consumed for another purpose than the mere pleasure of drinking. Moreover, the minimal amount of wine which is consumed in these services could hardly be said to gratify an appetite for intoxicants.

Therefore, it is the opinion of this office that wines used in religious services are not being used "for beverage purposes" as provided in Section 311.020.

Honorable Al Mueller

In support of this conclusion we note that the Division of Liquor Control has enforced this statute in this same manner since its passage. As stated in State v. Public Service Commission of Missouri, 343 S.W.2d 177 (K.C.Ct.App. 1960):


"Our courts consistently observe the principle that the construction placed upon a statute by a governmental agency charged with its execution and enforcement is entitled to great consideration and should not be disregarded or disturbed, unless clearly erroneous -- particularly when that construction has been followed and acted upon for many years." p. 182.

#### CONCLUSION

Therefore, it is the opinion of this office that "sacramental wines" are not included in the definition of "intoxicating liquor" as used in Section 311.020, RSMo 1969, and that such wines are not subject to the licensing and regulatory provisions of Chapter 311, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Cary Augustine.

Very truly yours,

A handwritten signature in dark ink, reading "John Ashcroft". The signature is fluid and cursive, with a prominent "J" and "A".

JOHN ASHCROFT  
Attorney General

SOCIAL SECURITY: Joint boards created by cooperative  
COOPERATIVE AGREEMENTS: agreements of political subdivisions  
OFFICE OF ADMINISTRATION: under § 70.260, RSMo, may, depending  
on the agreement, come within the  
definition of "instrumentality" for  
the purpose of social security report-  
ing of the employees of such joint  
boards under §§ 105.300, RSMo, et seq.

June 5, 1979

OPINION NO. 38

The Honorable Stephen C. Bradford  
Commissioner of Administration  
Room 125, State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Bradford:

This opinion is in response to your question asking whether political subdivisions contracting under the joint cooperative agreement statutes, §§ 70.210, RSMo, et seq., create a new instrumentality for the purpose of social security reporting under the provisions of § 105.300, RSMo, et seq.

Under the statutes relating to old age and survivors insurance, §§ 105.300, RSMo, et seq., "employee" is defined in § 105.300(2) as follows:

" . . . elective or appointive officers and employees of the state, including members of the general assembly, and elective or appointive officers and employees of any political subdivision of the state, including county officers remunerated wholly by fees from sources other than county funds, or any instrumentality of either the state or such political subdivisions; and employees of a group of two or more political subdivisions of the state organized to perform common functions or services;"

The Honorable Stephen C. Bradford

Likewise, "instrumentality" is defined in § 105.300 (7) as follows:

" . . . an instrumentality of a state or of one or more of its political subdivisions but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or such political subdivision and whose employees are not by virtue of their relation to such juristic entity employees of the state or such subdivision;"

Section 70.260, RSMo, provides:

"The joint contract may also provide for the establishment and selection of a joint board, commission, officer or officers to supervise, manage and have charge of such joint planning, development, construction, acquisition, operation or service and provide for the powers and duties, terms of office, compensation, if any, and other provisions relating to the members of such joint board, commission, officers or officer. Such contracts may include and specify terms and provisions relative to the termination or cancellation by ordinance, order or resolution, as the case may be, of such contract or cooperative action and the notice, if any, to be given of such cancellation, provided that such cancellation termination shall not relieve any party participating in such contract or cooperative action from any obligation or liability for its share of the cost or expense incurred prior to the effective date of any such cancellation."

The Honorable Stephen C. Bradford

It is our view that it is possible for political subdivisions coming within the scope of §§ 70.210, et seq., to provide for the establishment of a new instrumentality under § 70.260, which would be a "juristic entity" within the definition of § 105.300(7). Although § 70.260 does not expressly provide for the hiring of employees by such a joint board, it seems clear that the statutory authority of the joint board to have charge of such a joint operation implicitly recognizes the authority of the board to hire employees. Of course whether or not the joint board may be given all the powers that it can lawfully exercise under § 70.260 will be dependent upon the terms of the cooperative agreement entered into by the political subdivisions.

We are enclosing our Opinions Nos. 282 dated September 28, 1964, to Trigg and 24 dated April 4, 1952, to Downs, both of which are self-explanatory and are for the most part applicable to your question.

It is therefore our view that a joint board created under § 70.260 may constitute a juristic instrumentality for the purpose of social security coverage of such employees under §§ 105.300, et seq.

#### CONCLUSION

It is the opinion of this office that joint boards created by cooperative agreements of political subdivisions under § 70.260, RSMo, may, depending on the agreement, come within the definition of "instrumentality" for the purpose of social security reporting of the employees of such joint boards under §§ 105.300, RSMo, et seq.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

JOHN ASHCROFT  
Attorney General

Enclosures

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

January 24, 1979

OPINION LETTER NO. 40

Honorable Frank Bild  
State Senator, 15th District  
Room 320A, State Capitol  
Jefferson City, Missouri 65101

Dear Senator Bild:

This letter is issued in response to your request for an opinion as to whether or not an automobile leasing company is required to collect Missouri state sales tax when it leases an automobile to a religious, charitable or eleemosynary institution. You have informed us that a certain leasing company is charging and collecting sales tax from an eleemosynary institution which leases cars from it.

From your discussion, we assume that the leasing company in question is a "motor vehicle leasing company" as that term is defined in the sales and use tax law, Section 144.010.1 (4), RSMo (because of the many changes in the sales and use tax law, all references to RSMo are to Vernon's Annotated Missouri Statutes). That is, we assume the leasing company is a company which has obtained a permit from the Director of Revenue which enables it to collect sales tax in accordance with subsection 5 of Section 144.070 rather than paying a tax at the time of registration based upon the purchase price of the vehicle in question. Section 144.070.5 provides that a sales tax shall be charged to and paid by a leasing company on the amount charged for each rental or lease agreement. Of course, this tax is collected from the customer by the company.

For these purposes, the leasing company is to be treated the same as any other business engaged in the practice of selling

Honorable Frank Bild

tangible personal property at retail. The company's rental or lease charges constitute "gross receipts" as that term is defined in Section 144.010.1(3), which provides that lease or rental considerations are includable in "gross receipts" for sales tax purposes when a right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such a transfer of possession would be taxable if outright sale were made.

Section 144.040.1, RSMo, exempts from the provisions of Sections 144.010 to 144.745 all sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities. Subsection 2 of Section 144.040, RSMo, exempts all sales made by or to not-for-profit civic, social, service or fraternal organizations solely in their civic or charitable functions and activities, and all sales made to eleemosynary and penal institutions and industries of the state. In our opinion, this section is applicable to lease and rental agreements which are subject to tax under the provisions of the Missouri sales tax act in the same manner as any other "sale". The term "sale" as it is used in the sales tax statutes has been given a very broad definition. In Section 144.010.1(7), it has been defined as any transfer or exchange, conditional or otherwise, of tangible personal property for a valuable consideration as well as the rendering, furnishing or selling of any of the substances, things and services designated and defined as taxable under the terms of Sections 144.010 to 144.510. This is certainly broad enough to include rental or lease considerations taxable under the provisions of the sales tax act. The exemption provisions of Section 144.040 apply to lease or rental transactions in the same manner as they apply to any other "sale" which is taxable under Chapter 144.

However, it is impossible to speculate in the absence of a full factual disclosure as to whether or not a certain institution is entitled to an exemption under the provisions of Section 144.040. Inasmuch as we have not been provided with any factual information concerning the activities or the nature of the institution involved in your opinion request, we must decline to issue an opinion as to whether or not such an institution is exempt from the payment of sales tax on a particular transaction.

Very truly yours,



JOHN ASHCROFT  
Attorney General

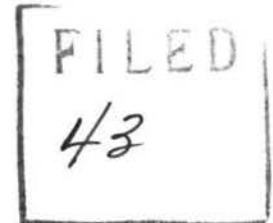
CONFLICT OF INTEREST:  
COORDINATING BOARD FOR  
HIGHER EDUCATION:

A person cannot serve simultaneously  
as a trustee of a private college in  
Missouri and as a member of the State  
Coordinating Board for Higher Education.

OPINION NO. 43

January 17, 1979

Honorable Paul L. Bradshaw  
Missouri Senate, 30th District  
Senate Post Office  
Jefferson City, Missouri 65101



Dear Senator Bradshaw:

This official opinion is in response to your request for  
a ruling on the following question:

"Can a person properly serve simultaneously  
as a trustee of a private college in Missouri  
and also as a member of the state Coordinating  
Board for Higher Education?"

Section 6.1.2 of the Omnibus State Reorganization Act of  
1974, Appendix B, abolished the Commission on Higher Education,  
Chapter 173, RSMo, and transferred by Type 1 transfer all its  
powers and duties to the Coordinating Board for Higher Education.  
Section 173.060(1) stated that no member of the former Commission  
"shall be engaged professionally as an educator during his term  
of office, or shall he be serving as a member of a governing board  
of any institution of higher education in the state." Section 6.2  
provides that "[n]one of the members shall be engaged professionally  
as an educator or educational administrator, at the time appointed  
or during his term."

Section 6.2 does not include the phrase "or shall he be  
serving as a member of a governing board of any institution of  
higher education in the state". Rather, Section 6.2 states that  
none of the members shall be engaged professionally as an educator  
or educational administrator. The question is whether the term  
"educational administrator" in Section 6.2 includes one who serves  
as a member of the governing board of an institution of higher  
education.



Honorable Paul L. Bradshaw

The term "educational administrator" is not defined in the statute. Before the true meaning of a statute can be determined where there is genuine uncertainty as to how it should apply, consideration must be given to the problem to which the legislature addressed itself and the operation and administration of the statute.

The Coordinating Board for Higher Education was created in Section 6 of the Omnibus State Reorganization Act of 1974, Senate Bill No. 1, 77th General Assembly, First Extraordinary Session 1974. The Board consists of nine members appointed by the Governor with the advice and consent of the Senate, and the Board acts as the head of the Department of Higher Education with supervisory and review authority over the various public institutions of higher education in the state, and has data and information-gathering authority over the various private institutions in the state. The Board is given authority in Section 6.2(7) to collect the necessary information and develop comparable data for all institutions of higher education in the state. The Board uses this information to delineate the areas of competence of each of these institutions and for any other purposes deemed appropriate by the Coordinating Board. Subsection (8) of Section 6.2 states that "Compliance with requests from the coordinating board for institutional information and the other powers, duties and responsibilities, herein assigned to the coordinating board, shall be a prerequisite to the receipt of any funds for which the coordinating board is responsible for administering. . . ."

The funds which the Coordinating Board is responsible for administering in the State of Missouri are the funds administered through the Student Grant and Loan Programs.

Subsection (9) of Section 6.2 provides for imposition of sanctions if "any institution of higher education in the state, public or private, willfully fails or refuses to follow any lawful guideline, policy or procedure established or prescribed by the Coordinating Board, or knowingly deviates from any such guideline . . . or willfully fails to comply with any other lawful order . . ." of the Coordinating Board. In such circumstances the Coordinating Board may, after a public hearing, withhold or direct to be withheld from that institution any funds the disbursement of which is subject to the control of the Coordinating Board.

A contemporaneous interpretation of Section 6.2 was made at or soon after the time of its enactment in Attorney General Opinion No. 193, Blakely, July 26, 1974, a copy of which is enclosed. In that opinion the Attorney General stated that simultaneous membership on the Coordinating Board for Higher Education and on a board of a Missouri junior college district or a state university is improper because the Coordinating Board has extensive supervisory

Honorable Paul L. Bradshaw

powers over the various state institutions of higher education in the state. The opinion did not directly address the question of whether or not board members of a junior college district or of a state university are "educational administrators"; however, the official opinion obviously so concluded implicitly in its prohibition of simultaneous memberships.

The term "educational administrator" is a broad term, arguably encompassing a broad range of activity. Although the curators at the University of Missouri, for example, referred to in Section 6.2, are not professional educational administrators in the most strict sense of the word, they have extensive administrative duties within the university as delineated in Chapter 172, RSMo 1969.

Opinion No. 193, 1974, did not directly address the question of membership on the Coordinating Board concurrent with membership on the board of a private institution. The reasoning of the earlier opinion, however, which notes the intrinsic incompatibility of the two offices, applies to the present case.

In the present case, the element which is the most significant to the interpretation of the term "educational administrator" and its application in this context is the actual functioning of the Coordinating Board itself and the continuous potential for conflict inherent therein when the Board seeks to coordinate Missouri higher education. Through exercising their data and information-gathering powers over private institutions, and in holding the power to impose sanctions upon non-complying institutions, the members of the Coordinating Board are placed in positions of on-going potential conflict with not only the state, but also the private, institutions of Missouri. Neither the state nor the individual institution would be most effectively represented by one who holds membership in both entities simultaneously.

It is a well-established principle of administrative law that ". . . [t]he interpretation and construction of the statute by an agency charged with its administration is entitled to great weight. . . ." Foremost-McKesson, Inc. v. Davis, 488 S.W.2d 193, 197 (Mo. Banc 1972). Two current members of the Coordinating Board voluntarily resigned positions as trustees of private institutions in Missouri before accepting positions on the Coordinating Board because they regarded their positions as trustees of private institutions as holding potential conflicts of interest with the Coordinating Board.

Furthermore, the legislature has provided the Coordinating Board with an "advisory committee" composed of representatives from state and private institutions whose presence will assure that the Coordinating Board has full knowledge of the problems facing the institutions

Honorable Paul L. Bradshaw

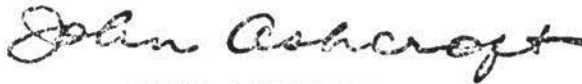
that it seeks to coordinate. The advisory committee provided for in Section 6.3 includes representatives of each of five accredited private institutions selected biennially, under the supervision of the Coordinating Board, by the presidents of all the state's privately supported institutions; but always to include at least one representative from one privately supported junior college, one privately supported four-year college and one privately supported university. The committee's function is to advise the Coordinating Board of the views of institutions on matters within the purview of the Coordinating Board.

#### CONCLUSION

It is the opinion of this office that a person cannot serve simultaneously as a trustee of a private college in Missouri and as a member of the State Coordinating Board for Higher Education.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Ann Covington.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft".

JOHN ASHCROFT  
Attorney General

Enclosure

Op.No. 193, Blakely, 7-26-74

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

March 5, 1979

OPINION LETTER NO. 45  
(Answer by Letter-Card)

Honorable Vic Downing  
Representative, District 162  
Room 303C, State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Downing:

This letter is in response to your request for a legal opinion concerning the State Advisory Council for Vocational Education which is required to be established by the provisions of P.L. 94-482 if the State of Missouri desires to participate in programs under the Vocational Education Act of 1963, as amended, and to receive federal funds pursuant thereto. First, you request an opinion as to whether it takes an executive order issued by the governor or a state statute to create and establish such a council. Secondly, you request an opinion as to whether the appointment of the members to this council are subject to confirmation by the Missouri Senate.

Section 105(a) of Public Law 94-482 (20 U.S.C. §2305) provides:

"(a) Any State which desires to participate in programs under this chapter for any fiscal year shall establish a State advisory council, which shall be appointed by the Governor or, in the case of States in which the members of the State board of education are elected (including election by the State legislature), by such board. Members of each State advisory council shall be appointed for terms of three years except that (1) in the case of the members appointed for fiscal year 1978, one-third of the membership

Honorable Vic Downing

shall be appointed for terms of one year each and one-third shall be appointed for terms of two years each, and (2) appointments to fill vacancies shall be for such terms as remain unexpired. Each State advisory council shall have as a majority of its members persons who are not educators or administrators in the field of education and shall include as members one or more individuals who --

(1) represent, and are familiar with, the vocational needs and problems of management in the State;

(2) represent, and are familiar with, the vocational needs and problems of labor in the State;

(3) represent, and are familiar with, the vocational needs and problems of agriculture in the State;

(4) represent State industrial and economic development agencies;

(5) represent community and junior colleges;

(6) represent other institutions of higher education, area vocational schools, technical institutes, and postsecondary agencies or institutions which provide programs of vocational or technical education and training;

(7) have special knowledge, experience, or qualifications with respect to vocational education but are not involved in the administration of State or local vocational education programs;

(8) represent, and are familiar with, public programs of vocational education in comprehensive secondary schools;

(9) represent, and are familiar with, non-profit private schools;

Honorable Vic Downing

(10) represent, and are familiar with, vocational guidance and counseling services;

(11) represent State correctional institutions;

(12) are vocational education teachers presently teaching in local educational agencies;

(13) are currently serving as superintendents or other administrators of local educational agencies;

(14) are currently serving on local school boards;

(15) represent the State Manpower Services Council established pursuant to section 817 of Title 29;

(16) represent school systems with large concentrations of persons who have special academic, social, economic, and cultural needs and of persons who have limited English-speaking ability;

(17) are women with backgrounds and experiences in employment and training programs, and who are knowledgeable with respect to the special experiences and problems of sex discrimination in job training and employment and of sex stereotyping in vocational education, including women who are members of minority groups and who have, in addition to such backgrounds and experiences, special knowledge of the problems of discrimination in job training and employment against women who are members of such groups;

(18) have special knowledge, experience, or qualifications with respect to the special educational needs of physically or mentally handicapped persons;



Honorable Vic Downing

(19) represent the general public, including a person or persons representing and knowledgeable about the poor and disadvantaged; and

(20) are vocational education students who are not qualified for membership under any of the preceding clauses of this sentence.

Members of the State advisory council may not represent more than one of the above-specified categories. In appointing the State advisory council the Governor or the State board of education, as the case may be, shall insure that there is appropriate representation of both sexes, racial and ethnic minorities, and the various geographic regions of the State."

An Advisory Council for Vocational Education was first required by federal law in 1968 with the passage of P.L. 90-576.

In your opinion request, you indicate that there has been in existence and functioning since that time a State Advisory Council for Vocational Education and that federal funds have been received by the state in accordance with the provisions of the Vocational Education Act of 1963, as amended. In checking with the executive secretary to the council and with the governor's legal counsel, we have been unable to find or locate any executive order creating or establishing an Advisory Council on Vocational Education. Rather, from what we have been able to determine each governor, beginning with Governor Hearnes in 1968, has simply certified to the United States Commissioner of Education that there has been established in Missouri an Advisory Council on Vocational Education and each governor has periodically made appointments to said council.

Periodically, the general assembly has appropriated federal funds received by the state to the Department of Elementary and Secondary Education for the Advisory Council on Vocational Education. We have also been able to determine, that with the exception of appointments made by Governor Bond in 1973 to the State Advisory Council on Vocational Education, none of the appointments by the various governors have been sent to the Missouri Senate for confirmation.



Honorable Vic Downing

With the possible exception of Section 178.550, RSMo 1969, we have not been able to find any state statute creating or establishing an Advisory Council on Vocational Education to comply with the provisions of P.L. 94-482 to the predecessor provisions in P.L. 90-576.

In Opinion Letter No. 24, issued on September 27, 1978, to Stephen C. Bradford, the Commissioner of Administration, (copy enclosed) we concluded that the Mississippi River Parkway Planning Commission had never been properly established by law in Missouri in the absence of a specific statute or executive order creating said commission. Further, in Opinion No. 50, issued on January 11, 1972, to William Culver, the Executive Director of the Missouri Law Enforcement Assistance Council, we concluded that the Governor had the authority to create a Law Enforcement Assistance Council for the purpose of receiving federal funds and implementing the provisions of the Omnibus Crime Control and Safe Streets Act of 1968 in Missouri.

Subsequently, the general assembly in Section 1, subsection 12, of the Omnibus State Reorganization Act of 1974 (Appendix B RSMo 1975) passed specific legislation authorizing the governor to create, by executive order, such advisory councils or committees as may be required by federal law to receive federal funds. This section provides:

"The governor is authorized to create by executive order such advisory councils or committees as may be required to conform with requirements to receive federal grants, provided that such executive orders shall be submitted as provided in sections 26.500 through 26.540, RSMo except that such executive orders shall be effective immediately, but will be void if a resolution to disapprove is adopted by either house of the general assembly as provided in sections 26.500 through 26.540, RSMo. The head of the department shall appoint all members of such advisory councils unless federal law or regulation or this act requires otherwise, in which case they shall be subject to the federal requirement as shall be provided by executive order. Members of such advisory councils shall

Honorable Vic Downing

be allowed only reimbursement for their actual and necessary expenses from the appropriations made to the department or agency to which they render advice. All advisory councils or committees shall annually make a report on their activities to the director of the department including all recommendations. A copy of each such report shall be transmitted by the advisory committee to the governor and to the legislative library."

We have also reviewed the provisions of Section 178.550, RSMo 1969, which provides:

"The president of the state board of education shall annually appoint a committee of five members to be known as the 'State Advisory Committee for Vocational Education'. The state advisory committee shall consist of one person of experience in agriculture; one employer; one representative of labor; one person of experience in home economics; one person of experience in commerce. The state commissioner of education is ex officio a member and the chairman of the advisory committee. The state board of education shall formulate general principles and policies for the administration of sections 178.420 to 178.580, which, when they have been approved by the state advisory committee, shall be put into effect. Joint conferences between the state board of education and advisory committee shall be held at least four times each year. All members of the state advisory committee shall be reimbursed for their actual expenses in attending the conferences."

However, this section, in our view, does not comply with the provisions of Public Law 94-482 for two reasons. First, the members of this particular committee established by state law are not appointed by the governor. Secondly, the membership of this particular statutory committee does not comply with the composition requirements of the federal law as set forth previously. Also, we have been advised by the Department of

Honorable Vic Downing

Elementary and Secondary Education that no members to the committee mandated by Section 178.550 have been appointed since 1970 in that its functions have been superceded by the advisory council mandated by federal law.

Consequently, in answer to your first question, we conclude that for an advisory council to have legal existence in this state for carrying out public functions required by federal law such council must be created and established either by a state statute or by an executive order issued by the governor pursuant to the provisions of Section 1, subsection 12, of the Omnibus State Reorganization Act.

Turning to your second question, Article IV, Section 51, of the Missouri Constitution, as amended, provides:

"Appointments, how made -- failure to confirm, effect of. -- The appointment of all members of administrative boards and commissions and of all department and division heads, as provided by law, shall be made by the governor. All members of administrative boards and commissions, all department and division heads and all other officials appointed by the governor shall be made only by and with the advice and consent of the senate. The authority to act of any person whose appointment requires the advice and consent of the senate shall commence, if the senate is in session, upon receiving the advice and consent of the senate. If the senate is not in session, the authority to act shall commence immediately upon appointment by the governor but shall terminate if the advice and consent of the senate is not given within thirty days after the senate has convened in regular or special session. If the senate fails to give its advice and consent to any appointee, that person shall not be re-appointed by the governor to the same office or position." (Emphasis added)

Further, the federal law mandating an Advisory Council on Vocational Education as a condition of receiving federal funds is very specific as to the powers and duties of such council.

Honorable Vic Downing

Sections 105(d), 105(e), and 105(f) (1) and (2) of Public Law 94-482 (20 U.S.C. Section 2305(d), 2305(e), and 2305(f) (1) and 2305(f) (2)) provide:

"(d)(1) Each State advisory council shall advise the State board in the development of the five-year State plan submitted under section 2307 of this title and the annual program plan and accountability report submitted under section 2308 of this title and shall advise the State board on policy matters arising out of the administration of programs under such plans and reports.

(2) Each state advisory council shall also evaluate vocational education programs, services, and activities assisted under this chapter, and publish and distribute the results thereof.

(3) Each State advisory council shall prepare and submit to the Commissioner and to the National Advisory Council created under section 2392 of this title, through the State board, an annual evaluation report, accompanied by such additional comments of the State board as the State board deems appropriate, which (A) evaluates the effectiveness of vocational education programs, services, and activities carried out in the year under review in meeting the program goals set forth in the five-year State plan submitted under section 2307 of this title and the annual program plan and accountability report submitted under section 2308 of this title, including a consideration of the program evaluation reports developed by the State pursuant to section 2312 of this title and of the analysis of the distribution of Federal funds within the State submitted by the State board pursuant to section 2308 of this title, and (B) recommends such changes in such programs, services, and activities as may be deemed necessary.

(4) (A) Each State advisory council shall identify, after consultation with the State Manpower Services Council, the vocational education and employment

and training needs of the State and assess the extent to which vocational education, employment training, vocational rehabilitation, special education, and other programs assisted under this chapter and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and (B) comment, at least once annually, on the reports of the State Manpower Services Council which comments shall be included in the annual report submitted by the State advisory council pursuant to this section and in the annual report submitted by the State council pursuant to section 817 of Title 29.

(e) Each State advisory council is authorized to obtain the services of such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions under this chapter and to contract for such services as may be necessary to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(f) (1) There are hereby authorized to be appropriated \$8,000,000 for fiscal year 1978, \$8,500,000 for fiscal year 1979, \$9,000,000 for fiscal year 1980, \$10,000,000 for fiscal year 1981, and \$10,000,000 for fiscal year 1982, for the purpose of making grants to State advisory councils to carry out the functions specified in this section. From the sums appropriated pursuant to this subsection, the Commissioner shall, subject to the provisions of the following sentence, make grants to State advisory councils for amounts allotted to such advisory councils in accordance with the method for allotment contained in section 2303(a)(2) of this title, to carry out the functions specified in this section, and shall pay to each State advisory council an amount equal to the reasonable amounts expended by it in carrying out its functions under this chapter in such fiscal year, except that no State advisory council shall receive an amount to



Honorable Vic Downing

exceed \$200,000 or an amount less than \$75,000. In the case of Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Commissioner may pay the State advisory council in each such jurisdiction an amount less than the minimum specified in the preceding sentence if he determines that the council can perform its functions with a lesser amount.

(2) The expenditure of these funds is to be determined solely by the State advisory council for carrying out its functions under this chapter, and may not be diverted or reprogramed for any other purpose by any State board, agency or individual. Each council shall designate an appropriate State agency or other public agency, eligible to receive funds under this chapter, to act as its fiscal agent for purposes of disbursement, accounting and auditing."

It is our view in light of the specific duties and responsibilities that this council is an administrative board or commission within the meaning of Article IV, section 51, of the Constitution of Missouri. It is charged with making specific executive decisions for and on behalf of the state and has the sole authority to determine the expenditure of the federal funds received by the State for the Council to carry out its duties. Its duties are not simply advisory to other executive officials.

Consequently, it is our view, that in accordance with the provisions of Article IV, section 51, of the Missouri Constitution, as amended, appointments by the governor to the State Advisory Council on Vocational Education, mandated by Public Law 94-482, if properly created either by state law or executive order, will be subject to confirmation by the Missouri Senate. We do not believe that is necessary in this opinion letter to determine

Honorable Vic Downing

whether persons named by the Governor to a purely advisory commission or board must be confirmed by the Senate in view of the fact that the State Advisory Council on Vocational Education does have more than purely advisory duties.

Very truly yours,

JOHN ASHCROFT  
Attorney General

Enclosure: Op. Ltr. No. 24  
9/27/78, Bradford



*Attorney General of Missouri*

JEFFERSON CITY

65102

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

December 26, 1979

OPINION LETTER NO. 46

Mr. F. M. Wilson, Director  
Department of Public Safety  
P.O. Box 749  
Jefferson City, Missouri 65102

Dear Mr. Wilson:

This official opinion is issued in response to your request for a ruling.

Your request asks for a determination of how the "Aquascooter" is to be regulated pursuant to Chapter 306 (Watercraft) of the Missouri Revised Statutes.

The Aquascooter is a device one or more swimmers may use to be pulled through the water at an advertised speed of four miles per hour. The propulsion is created by a one-cylinder, two horsepower gasoline engine turning an enclosed propeller. A snorkle is attached to supply air to the engine. Handles are attached to enable the swimmer to direct the Aquascooter and be pulled by it. The device will float unattended. Photographs show it to be approximately two feet long, one foot high, and one foot wide.

A swimmer using the device receives no protection from the effects of the elements. The exposure is total and complete. Moreover, the Aquascooter is not designed to carry cargo and neither is it so capable. The purpose of the Aquascooter is to enhance the swimmer's enjoyment of his recreation. Its characteristics lend themselves exclusively to the recreational end.

Mr. F. M. Wilson, Director

The Aquascooter is not a "boat" as that word is commonly used. Section 306.010, S.B. No. 123, 80th General Assembly, defines three means of transport on water subject to regulation by Chapter 306: a motorboat is "any vessel propelled by machinery whether or not such machinery is a principal source of propulsion"; a vessel is, in pertinent part, "every motorboat and every description of motorized watercraft"; a watercraft is "any boat or craft, including a vessel, used or capable of being used as a means of transport on waters."

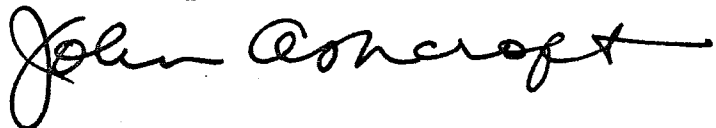
Missouri case law offers little guidance on the meaning of these terms, which appear to be practically equivalent. Indeed, Black's defines a "craft" to be a "vessel." Black's Law Dictionary 439 (4th ed. rev. 1968). The Oxford English Dictionary defines "vessel" as any structure designed to float upon and traverse the water for the carriage of persons and goods.

It is the opinion of this office that the Aquascooter does not fall within the meaning of the words "vessel", "motorboat", or "watercraft" as they are used in § 306.010, and is not to be regulated pursuant to the provisions of Chapter 306.

If a boat bracket is added to an Aquascooter, it may then be used as a motor to drive light boats, comparable to a trolling motor. Section 306.010(1), provides that a "motorboat" is any vessel propelled by machinery, whether or not such machinery is a principal source of propulsion. When an Aquascooter is attached to a vessel, such vessel becomes a motorboat under the definition found in § 306.010(1) and may be regulated by the Division of Water Safety as such.

Therefore, it is our view that an "Aquascooter" is not subject to regulation under Chapter 306, RSMo.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ashcroft", with a stylized flourish at the end.

JOHN ASHCROFT  
Attorney General

December 6, 1979

OPINION LETTER NO. 48

The Honorable Hardin C. Cox  
State Senator, District 12  
Room 416, Capitol Building  
Jefferson City, Missouri 65101



Dear Senator Cox:

This letter is in response to your questions asking:

Under any of the laws of Missouri,

- (1) May a county coroner declare an inquest to be a 'closed meeting' and refuse to admit members of the press or the general public?
- (2) May the county coroner refuse to grant access to any materials which may be presented at an inquest?
- (3) Must a county coroner keep a verbatim or other record of testimony presented?
- (4) How may records of an inquest be made available to the public?

In our Opinion Letter No. 3, dated March 11, 1975, to Snowden, copy enclosed, this office concluded that the county coroner in class one counties is required by the provisions of §§ 109.180 and 109.190 to make the records compiled and maintained in his office, pursuant to § 58.451, available for inspection and copying by any citizen of the state of Missouri under the conditions and restrictions provided for in §§ 109.180 and 109.190.

Such public record sections are still in effect, and in addition, the "Sunshine Law" which was first enacted in 1973, also requires that "public records" and "public meetings" of "public governmental bodies," as defined in § 610.010, RSMo, be open to the public with certain exceptions specified in § 610.025, RSMo.

The Honorable Hardin C. Cox

It is our view that the exceptions specified in § 610.025 are not applicable, and that the coroner's jury constitutes a "public governmental body," that the coroner's records, unless specifically designated otherwise, are public records and that the inquest conducted by a coroner pursuant to Chapter 58 is a "public meeting" within the provisions of the Sunshine Law. Such public records and public meetings are, except where the law may expressly declare otherwise, open to the public.

Therefore, in answer to your first and second questions, it is our view that the county coroner does not have the authority generally to declare an inquest to be a closed meeting and to refuse to admit members of the press or the general public. It is likewise our view that the county coroner does not have the authority to refuse to grant access to materials which may be presented at an inquest. It should be clear however that results of tests for blood alcohol and drug content taken for statistical purposes under §§ 58.445 to 58.449, RSMo, must be closed because of the requirements of the latter section. In this respect we are enclosing our Opinion No. 89, dated February 27, 1975, to Collins. See also State ex rel. Collins v. Donelson, 557 S.W.2d 707 (Mo.App., K.C.D. 1977). Of course, the deliberations of the coroner's jury would also be closed to the public.

Your third question asks whether the coroner must keep a verbatim or other record of testimony presented. Under § 58.350, RSMo, the evidence of witnesses must be taken down in writing and subscribed by them. Under § 58.360, RSMo, the jury verdict is to be delivered in writing to the coroner. Under § 58.375, in certain second class counties, the coroner upon holding an inquest and securing the jury's verdict thereon must file a record of the proceedings in the office of the prosecuting attorney. Under § 58.451, RSMo, the coroner in cities of 700,000 or more inhabitants and in certain counties of the first and second class must record certain facts relating to the condition of the body and the cause of death. Under § 58.740, RSMo, the medical examiner, in counties having medical examiners, is required to keep full and complete records in his office properly indexed as provided for therein. In addition, that section requires that the medical examiner promptly deliver to the prosecuting attorney of the county copies of all records relating to every death in which, in the judgment of such medical examiner, further investigation may be deemed advisable. Further, that section authorizes the prosecuting attorney of the county to obtain from the office of the medical examiner copies of such records or other information which he may deem necessary.

The Honorable Hardin C. Cox

Your fourth question asks how records of an inquest may be made available to the public. The procedure for the inspection of records is set out in § 109.190, RSMo. Under that section the public has the right of access to the records, documents or instruments for the purpose of making photographs of them while in the possession, custody and control of the lawful custodian or his authorized deputy. The work is to be done under the supervision of the custodian of the records who is authorized to adopt and enforce reasonable rules governing the work. The inspection is to be accomplished, if at all possible, where the records, documents, or instruments are kept, but if that is not possible, in a room as nearly adjacent to the place of custody as is possible to be determined by the custodian. Lastly, under § 109.190, the lawful custodian is entitled to charge the person desiring to make the photographs a reasonable rate [as determined by the county court in this instance] for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done. We enclose a copy of Att'y Gen. Op. No. 55, Casey, August 4, 1978, which is relative to inspection pursuant to § 109.190, RSMo, and which we believe to be self-explanatory.

Very truly yours,

JOHN ASHCROFT  
Attorney General

Enclosures - 3  
Att'y Gen. Op.Ltr. 3,  
Snowden, 3/11/75  
Att'y Gen. Op. No. 89,  
Collins, 2/27/75  
Att'y Gen. Op. No. 55,  
Casey, 8/4/78

COMPENSATION:  
OFFICE OF ADMINISTRATION:  
LABOR AND INDUSTRIAL COMMISSION:

Total compensation of the members  
of the Labor and Industrial Re-  
lations Commission is \$28,000 per  
annum.

OPINION NO. 49

August 27, 1979



Mr. Stephen C. Bradford  
Commissioner of Administration  
Office of Administration  
Post Office Box 809  
Jefferson City, Missouri 65102

Dear Mr. Bradford:

This is in response to your question asking:

"What is the statutory salary for the  
members of the Commission on Labor and  
Industrial Relations?"

You have provided us with a copy of an amended salary schedule  
for the Department of Labor and Industrial Relations executed by  
the Governor and filed with the Secretary of State on January 24,  
1978, purportedly submitted in accordance with Section 1.6(2) of  
the Reorganization Act. The pertinent salary range and schedules  
set out therein are as follows:

Chairman, Labor and Industrial Relations Commission	\$40,000
Commissioners	\$40,000

The statutory salaries of the members of the Labor and In-  
dustrial Relations Commission, payable from various funds, are  
as follows:

Mr. Stephen C. Bradford

\$ 4,500 (Section 286.121, RSMo)

\$ 2,000 (Section 290.461, RSMo)

\$ 4,000 (Section 286.095, RSMo)

\$ 7,500 (Section 286.030, RSMo)

\$10,000 (Amendment to Omnibus State Reorganization  
Act of 1974, Appendix B, Section 8.1, RSMo)

As can be seen, the total statutory compensation provided for such members is \$28,000. The maximum set by the amendments to the Omnibus State Reorganization Act, hereafter referred to as the Reorganization Act, is \$40,000.

Under Article IV, Section 49, of the Missouri Constitution, as amended in 1972, the Department of Labor and Industrial Relations is in charge of a labor and industrial relations commission consisting of three members appointed by the Governor by and with the advice and consent of the Senate. The constitutional provision is implemented by Section 8.1 of the Reorganization Act, as initially adopted in 1974 and as amended in 1977.

Section 8.1 provides:

"1. There is hereby created a 'Department of Labor and Industrial Relations' to be headed by a labor and industrial relations commission as provided by section 49, article IV, constitution of Missouri. All the powers, duties and functions of the industrial commission are transferred by type I transfer to the labor and industrial relations commission and the industrial commission is abolished. The commission shall nominate and the governor shall appoint, by and with the advice and consent of the senate, the director of the department to be the chief administrative officer of the department. The salary of the director shall be forty thousand dollars per annum. Members of the industrial commission on the effective date of this act shall become members of the labor and industrial relations commission and the terms of the labor and industrial relations commission members shall be the same as provided by law for the industrial commission. Individuals appointed



Mr. Stephen C. Bradford

as members of the industrial commission shall serve the remainder of the term to which they were appointed as members of the labor and industrial relations commission. The members of the labor and industrial relations commission shall receive the compensation set by law for members of the industrial commission except that for the additional duties imposed by this section each member of the commission shall receive in addition to other compensation allowed by law the sum of ten thousand dollars annually, to be paid in equal monthly installments. The board of rehabilitation is abolished as hereinafter set out and upon effective date of this act no compensation shall be paid to any person as a member of the board of rehabilitation, other provisions of the law notwithstanding. No member of the labor and industrial relations commission shall receive more than forty thousand dollars annually from all sources of compensation. The director of the department shall appoint other division heads in the department. For the purposes of subsections 6, 7, 8 and 9 of section 1 of this act, the director of the department shall be construed as the head of the department of labor and industrial relations."

The earlier law provided for a maximum compensation of \$28,000 for members of the Labor and Industrial Relations Commission, whereas the amendment raised the maximum to \$40,000.

Under Section 1.6(2) of the Reorganization Act a reorganization plan and changes thereto may be filed by the head of a department with the Secretary of State, the Revisor of Statutes and the Commissioner of Administration and are required to be published in the appendix to the Revised Statutes of Missouri and supplement to the Revised Statutes. Such reorganization plans are required to be filed on or before December 31 of each year and thereafter become effective, as applicable to departments, divisions, agencies, boards, commissions, units, or programs transferred by type II or type III transfers under the Reorganization Act, only as provided in Sections 26.500 to 26.540, RSMo, except as provided in subsections 12 and 13 of Section 1. The reference to subsections 12 and 13 of Section 1 is not relevant here.



Mr. Stephen C. Bradford

It is clear that the Reorganization Act transferred the powers, duties, and functions of the Industrial Commission by a type I transfer to the Labor and Industrial Relations Commission and abolished the Industrial Commission. In our view, reorganization plans involving type I transfers may be filed annually, as provided, to be effective when filed except as otherwise specified in such plans.

The salary schedule you enclosed with your opinion request was filed with the Secretary of State on January 24, 1978. However, it is our view that it is not necessary at this time to determine whether the plan was timely filed with the Secretary of State, the Commissioner of Administration and the Revisor of Statutes. Therefore, we do not consider those questions.

This office concluded in Opinion No. 53-1975, copy enclosed, that department heads have authority under the Reorganization Act to set the salary of division and other administrative positions subject to appropriations therefor and that the salary of the Adjutant General could be increased by the Director of the Department of Public Safety pursuant to Section 1.6(2) of the Reorganization Act. Clearly Opinion No. 53-1975 is not applicable to members of the Labor and Industrial Relations Commission because department reorganization plans under Section 1.6(2) only "provide for the level of compensation for division and other administrative positions". Therefore, Opinion No. 53-1975 does not purport to authorize the members of the Labor and Industrial Relations Commission to effect a change in their compensation by the department's reorganization plan.

Section 8.1 of the Reorganization Act, which we have quoted above, provides that the members of the Labor and Industrial Relations Commission shall receive the compensation set by law for members of the Industrial Commission, except that for the additional duties imposed by such section, each member of the commission shall receive in addition to other compensation allowed by law the sum of \$10,000 annually to be paid in equal monthly installments. Such section further provides that no member of the Labor and Industrial Relations Commission shall receive more than \$40,000 annually from all sources of compensation.

Section 8.1 of the Reorganization Act, which contains the provisions respecting the compensation of the members of the Labor

Mr. Stephen C. Bradford

and Industrial Relations Commission is not ambiguous and therefore cannot be changed by construction, for to do so would be an invasion of the legislative power. Thompson v. City of Lamar, 17 S.W.2d 960 (Mo. 1929).

We further note, in conclusion, that if the legislature intended the commission members to have a straight compensation of \$40,000 per annum, the legislature could have so stated in Section 8.1 quite clearly as was done in such section in setting the salary of the director at \$40,000 per year. Since the legislature has not chosen to do so, we feel we must follow the plain meaning of the provisions quoted. We do not have the authority to give such provisions a meaning which is contrary to the plain import of the statutory language.

#### CONCLUSION

It is the opinion of this office that the total compensation of the members of the Labor and Industrial Relations Commission is \$28,000 per annum.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN ASHCROFT  
Attorney General

Enclosure: Op. No. 53  
3/18/75, Garrett

*Attorney General of Missouri*

JEFFERSON CITY

(314) 751-3321

JOHN ASHCROFT  
ATTORNEY GENERAL

65101

January 26, 1979

OPINION LETTER NO. 50

Mr. Fred A. Lafser, Jr.  
Director, Department of Natural Resources  
1014 Madison Street  
Jefferson City, Missouri 65101



Dear Mr. Lafser:

This letter is in answer to your request asking:

"1. May the joint governing board of soil and water conservation districts transfer the duties of the treasurer of that board to the trustees of a subdistrict of those soil and water conservation districts?

2. May monies collected pursuant to §§ 278.245 and 278.250, RSMo. Supp. 1977, be used to fund lobbying activities on behalf of the soil and water conservation subdistrict?

3. May monies collected pursuant to §§ 278.245 and 278.250, RSMo. Supp. 1977, be returned to property owners when an originally planned watershed structure will no longer be constructed, a portion of the monies having been assessed to acquire easements of the structure; if monies may be returned, what procedures may be used, and more particularly, to whom may the money be returned?"

It is our view that the joint governing board may not transfer the treasurer's responsibility to the watershed subdistrict trustees.

Mr. Fred A. Lafser, Jr.

The main responsibility of the treasurer of the joint governing board is to keep account of the monies that are credited to each watershed district, and to write checks for contracts that are let for improvements in the subdistricts.

The statutory framework is as follows:

Section 278.110, RSMo. 1969, states:

"The state soil and water districts commission upon declaring the establishment of a soil and water district as provided in section 278.100 shall proceed to arrange in the following manner for the establishment of a board of soil and water district supervisors to act as a local governing body for such soil and water district. This board shall consist of five members. . .

\* \* \*

The board of soil and water supervisors shall elect a chairman from among themselves, and the county agricultural extension agent shall be secretary of the board."

Section 278.120, RSMo. 1969, states:

"1. Any soil and water district organized under the provisions of this law shall be a body corporate and shall possess only such powers as herein provided, . . ."

Section 278.160, RSMo. 1969, states:

"Subdistricts of a soil and water conservation district may be formed as provided in sections 278.160 to 278.300 for the purpose of carrying out watershed protection and flood prevention programs, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization and disposal of water, and for increasing recreation and industrial development and for the development of agricultural water management, irrigation and drainage."

Mr. Fred A. Lafser, Jr.

Section 278.220.1, RSMo. Supp. 1977, states in part:

"If the proposed subdistrict lies in more than one soil and water conservation district, the petition [for establishment] may be presented to the board of soil and water district supervisors of any one of the districts, and the soil and water supervisors of all the districts shall act jointly as a board of soil and water district supervisors with respect to all matters concerning the subdistrict, including its formation. They shall organize as a single board for such purposes and shall designate the chairman, vice chairman, and secretary-treasurer to serve for terms of one year. After organizing, they may continue to meet as a single board for the purposes of governing the subdistrict or they may meet as individual county boards and act, individually, on the minutes of meetings of the trustees of the subdistrict, as specified in section 278.240. A subdistrict which lies in more than one soil and water conservation district shall be formed in the same manner and shall have the same powers and duties as a subdistrict formed in one soil and water conservation district."

Section 278.240, RSMo. Supp. 1977, states in part:

"1. The board of soil and water conservation district supervisors of soil and water conservation district [sic] in which the subdistrict is formed shall be the governing body of the subdistrict. When a subdistrict lies in more than one soil and water conservation district, the combined boards of soil and water conservation district supervisors shall be the governing body.

2. Five persons living within the subdistrict shall be elected to serve as trustees of the subdistrict. . . . The trustees shall elect one of their members as chairman and one of their members as secretary to serve for terms of two years. If the governing board so designates the trustees may act in all matters pertaining to the subdistrict, except those concerning formation, consolidation, expansion or disestablishment of the subdistrict. All official

Mr. Fred A. Lafser, Jr.

actions taken by the trustees, however, shall be subject to the ratification of a majority of the governing boards of the individual soil and water conservation districts from which the subdistrict was formed. No actions taken by the trustees shall become effective until ratification of a majority of the governing boards has taken place. At the next regular meetings following any meeting of the trustees, each governing board may place on their agenda for approval or disapproval the actions taken by the trustees. Failure to take action by any board shall be construed as disapproval of all actions taken by the trustees. . . . If the governing board shall decide to continue meeting as a single board for purposes of governing the subdistrict, the trustees shall serve as an advisory body only."

Section 278.250.5, RSMo. Supp. 1977, states:

"5. The body having authority to levy taxes within the county shall levy the taxes provided in this law, and all officials charged with the duty of collecting taxes shall collect the taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected; computation shall be made on the regular tax bills, and when collected shall pay the same to the subdistrict ordering its levy and collection or entitled to the same, and the payment of such collections shall be made monthly to the treasurer of the subdistrict. The proceeds shall be kept in a separate account by the treasurer of the subdistrict and identified by the official name of the subdistrict in which the levy was made. Expenditures from the fund shall be made on requisition of the chairman and secretary of the governing body or the subdistrict or, alternately, on requisition of the chairman of the governing body of the subdistrict and the chairman of the trustees of the subdistrict."

According to the facts that you have provided us, a joint governing board wishes to transfer all of its functions to the trustees of the subdistrict. Although §278.240.2, RSMo. Supp. 1977, allows the joint governing board of the subdistrict to



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transfer some of its functions to the trustees of the subdistrict, there is no provision for abolishing the office of secretary-treasurer of the board of the subdistrict or of assigning the duties of the treasurer to the trustees of the subdistrict. The statutory scheme providing for a secretary-treasurer obviously does not contemplate the assignment of his duties to a board of five trustees. The statutes provide for a secretary-treasurer to sign checks and do not provide that all five trustees will sign checks and keep account of the funds of the subdistrict.

The treasurer of the joint governing board must therefore continue to perform the duties of the treasurer for the subdistrict.

With regard to question 2, concerning the use of watershed tax monies for lobbying, it is our opinion that tax monies may be used for lobbying in the Missouri general assembly by the watershed districts.

"The powers of levee, dam, flood control, water control and conservancy districts are only those expressly granted to them by the legislature, plus those impliedly necessary to effectuate the grants of power and those necessary to function as an independent legal entity." 3 Antieau, Local Government Law §30P.02 at 30P-8 (1977).

Sections 278.060 through 278.300, RSMo., do not specifically state whether watershed tax monies may be used for lobbying. Section 278.250.1, RSMo. Supp. 1977, states that watershed subdistricts:

". . . may levy an organization tax of not to exceed forty cents per one hundred dollars of assessed valuation of all real estate within the subdistrict, the proceeds of which may be used for organization and administration expenses of the subdistrict, the acquisition of real and personal property, including easements for rights-of-way, necessary to carry out the purposes of the subdistrict . . ."

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Section 278.120.1, RSMo. 1969, states:

"Any soil and water district organized under the provisions of this law shall be a body corporate and shall possess only such powers as herein provided, but any such powers possessed by said body corporate shall be particularly limited by the following provisos. . . ."

None of the provisos mentioned in that or other sections relate to lobbying. Thus, for the subdistrict to have the power to lobby, the power must be found by implication in the language of the statute. The likely place to find such an implication would be to find that lobbying is an "organization" or "administrative" expense of the subdistrict.

Although there are no cases dealing with the power of bodies corporate, such as the soil and water districts here, to lobby, these entities are similar to municipal corporations in that municipal corporations also only have powers expressly or impliedly granted to them by the legislature. Therefore, the rules with regard to the power of municipal corporations to employ lobbyists should apply to bodies corporate such as the soil and water conservation subdistricts that are the subject of this inquiry.

We are enclosing herewith two opinions rendered by this department on similar questions. In Opinion No. 167, issued July 10, 1969, to Honorable Robert H. Branon, it is stated that public funds of a school district could be used to employ and compensate a person to take part in support of or opposition to pending legislation affecting the interests of the school districts. In Opinion Letter No. 71, February 4, 1975, to Honorable Fred Williams, it is stated that it is legal for the Mayor of the City of St. Louis to use a civil service employee to act as a lobbyist before the general assembly.

Support for the proposition that municipal corporations may employ lobbyists, despite the lack of an express allowance of that action in an enabling statute, may be found in the failure of the legislature to include an express provision prohibiting such lobbying activities in this statute. Such a provision could have been included in this statute as it was in §162.011, RSMo. 1969, repealed in 1977. The following subsection had been attached to that statute enabling school boards of the state to form associations:



Mr. Fred A. Lafser, Jr.

"None of the funds of the association shall be used for salaries or expenses incurred for the purpose of influencing the passage or defeat of legislation before the general assembly."

While there is no state prohibition on using organizational tax money for lobbying purposes, there is a federal statute that may restrict the use of organizational tax monies for lobbying before the United States Congress. 18 U.S.C. §1913 (1948) states:

"No part of the money appropriated by an enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation . . . ."

Because enforcement of a federal statute would be involved with regard to lobbying before the United States Congress, this office suggests that the soil and water conservation districts contact the United States Attorney General for an interpretation of this statute, to see if it would apply to this situation.

Question 3 states:

"May monies collected pursuant to §§ 278.245 and 278.250, RSMo. Supp. 1977, be returned to property owners when an originally planned watershed structure will no longer be constructed, a portion of the monies having been assessed to acquire easements for the structure; if monies may be returned, what procedures may be used, and more particularly, to whom may the money be returned?"

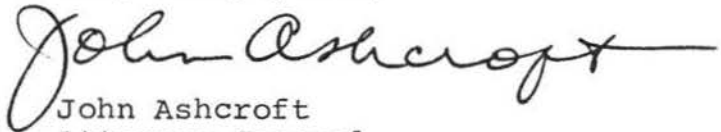
Further communications to this office reveal that your concern is with the refund of organization tax monies collected pursuant to §278.250, RSMo. Supp. 1977. It is our opinion that organization tax monies collected pursuant to this section may not be returned to the property owners.

Mr. Fred A. Lafser, Jr.

We are enclosing herewith an opinion rendered by this office on a similar question. In Opinion Letter No. 150, issued September 6, 1978, to Honorable John E. Casey, it is stated that a tax collected by a special road district may not be returned by the trustee to the taxpayers.

Refund of taxes is a matter of legislative grace, and, absent a statute authorizing the refund of taxes, taxes may not be refunded to the taxpayer. Since no statutory provision authorizes the subdistricts to refund these organization taxes, it is our view that no refund of such taxes can be made by the subdistrict.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

John Ashcroft  
Attorney General

Enc: Op. No. 167 - 1969  
Op. No. 71 - 1975  
Op. No. 150 - 1978

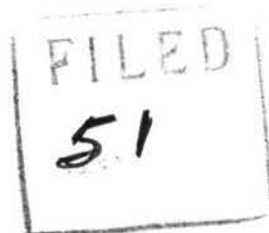
JUDGES:

A person who is otherwise eligible and has not waived his retirement benefits under the judicial retirement provisions of Sections 476.515 to 476.570, V.A.M.S., who no longer serves as a judge may elect not to receive retirement benefits, may practice law and if otherwise eligible, may elect to receive his retirement benefits after he ceases the practice of law.

OPINION NO. 51

January 12, 1979

Honorable Kenneth J. Rothman  
Member, House of Representatives  
Room 308-A, State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Rothman:

This opinion is in response to your question asking:

"Whether a Magistrate Judge who is past the age of 65 and is not reelected to office could elect not to receive Judicial retirement benefits and practice law for a year or two and then begin receiving retirement benefits, or would such individual waive all retirement benefits and not be permitted to begin drawing them at a future time if he engaged in the private practice of law."

We assume that such person has not requested a refund of retirement contributions and waived his retirement rights under Section 476.540, V.A.M.S.

In our Opinion No. 419-1971, to Vaughn, this office concluded that, under the retirement system provided for in Sections 476.515 to 476.570, V.A.M.S., a judge who had served twelve years but who was not yet 65 years of age could resign as a judge and practice law until he is 65 years of age and then cease the practice of law and draw his retirement benefits. Opinion 419-1971 was withdrawn for reasons not relevant here.

Honorable Kenneth J. Rothman

That opinion is quite lengthy and deals with matters which would not be pertinent here. We believe it would not be appropriate to distribute the opinion, however, in it we stated as follows:

"Your second question asks whether a judge who served twelve years but was not yet sixty-five years of age could resign as judge, practice private law until he was sixty-five years of age and then stop practicing law and draw his retirement benefits.

"Under Section 11 the person who receives such retirement compensation is barred from practicing law after retirement. Section 2 requires that a judge be sixty-five years of age or over to be eligible for retirement and this is true even if the retirement benefits are prorated under the provisions of Section 7. Under Section 6 a person ceasing to hold office as a judge for any reason other than death or retirement may make written application to the comptroller for a refund of his contributions. Of course, under Section 1(4) benefits in excess of contributions made to the system by a judge are considered part of the judge's compensation for services rendered. In the premises we find nothing that prohibits such a judge from leaving his judicial office and practicing law and thereafter retiring from the practice of law at the age of sixty-five and receiving judicial retirement benefits. The answer to your second question is therefore yes, that such a person may serve twelve years, or for that matter, less, if his compensation is to be on a pro rata basis under Section 7 of the Act, leave the judicial service, practice law until he reaches sixty-five and thereupon if otherwise eligible draw judicial retirement benefits. Obviously after he draws the benefits having retired under the Act, he cannot practice law."

We then concluded:

"A judge who served twelve years but is not sixty-five years of age may resign as judge,

Honorable Kenneth J. Rothman

practice law until he is sixty-five years of age and then cease the private practice of law and draw his retirement benefits;"

The provision which we considered at that time and which is still applicable is Section 476.565, V.A.M.S., which provides:

"Any person who receives retirement compensation under the provisions of sections 476.515 to 476.570 shall not engage in the practice of law or do law business at any time after his retirement."

Your question differs only in the respect that the magistrate judge is over the age of 65 at the time that he leaves office because of the fact that he was not reelected. We believe our 1971 opinion would be applicable to such a judge and that a judge who is over 65 years of age when he leaves the bench because of non-reelection to the office may practice law although he clearly could not practice law and receive retirement benefits at the same time. It is our view that he may receive such retirement benefits, if otherwise eligible, at the time he ceases the practice of law and requests such benefits.

#### CONCLUSION

It is the opinion of this office that a person who is otherwise eligible and has not waived his retirement benefits under the judicial retirement provisions of Sections 476.515 to 476.570, V.A.M.S., who no longer serves as a judge may elect not to receive retirement benefits, may practice law and if otherwise eligible, may elect to receive his retirement benefits after he ceases the practice of law.

The foregoing opinion which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN ASHCROFT  
Attorney General

CLEAN WATER COMMISSION:

The point source discharges of pollutants from federal facilities within the State of Missouri are subject to the same NPDES program requirements as are any other point source discharges of pollutants subject to the Missouri Clean Water Law and the regulations adopted pursuant thereto.

OPINION NO. 53

January 26, 1979

Mr. Fred Lafser, Director  
Department of Natural Resources  
1014 Madison Street  
Jefferson City, Missouri 65101

Dear Mr. Lafser:

This official opinion is issued in response to your opinion request posing the following question:

"Do the laws and regulations of the State of Missouri in relationship to the NPDES program apply in the same manner and to the same extent to point source discharges of pollutants from federal facilities within the State of Missouri as to any other point source discharges of pollutants."

The main reference providing the answer to this question is found in Section 204.016(5), RSMo Supp. 1975, definition of "person" in the Missouri Clean Water Law. This definition is also carried forward into the Missouri Clean Water Commission rules and regulations in 10 CSR 20-2.010(23) which reads substantially the same. The definition is as follows:

"'Person', any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political sub division, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;"

Mr. Fred Lafser

It is therefore clear that the Clean Water Law by its definition of person clearly applies to federal entities. An example of the application of this term is found in Section 204.051, RSMo Supp. 1975, which lists prohibited acts and permit requirements under the Clean Water Law. With respect to the prohibited acts, Section 204.051.1 prefaces the four specific prohibited acts with the phrase "it is unlawful for any person". Therefore, it can be seen clearly that these prohibitions apply to persons, including by definition the federal agencies listed in the above-quoted definition. Very briefly these four prohibitions include causing pollution of waters of the state; discharging water contaminants into waters of the state which would violate water quality standards, violating pretreatment and toxic material control regulations or discharging water contaminants which exceed effluent regulations or permit provisions; and finally, discharging radiological, chemical or biological warfare agents or high level radioactive wastes. Therefore, discharges of pollutants from federal facility point sources are subject to Missouri Clean Water Law prohibitions and regulation.

Section 204.051.2 which begins the permit requirements states that:

"It shall be unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state . . . unless he holds a permit from the commission, . . ."

The two terms used in Section 204.051.2, "water contaminant or point source" are both defined in Section 204.016, and neither one excepts federal agencies or facilities from its definition.

An examination of all the other substantive provisions of the Missouri Clean Water Law found in Chapter 204, RSMo Supp. 1975, and also the Missouri Clean Water Regulations beginning at 10 CSR 20-1.010 of the Code of State Regulations does not reveal any exceptions for federal facilities from the requirements of the law and regulations. Therefore, federal agencies are clearly included under the definition of persons on which the law operates, and they are nowhere excluded or exempted within the Missouri Clean Water Law and the regulations adopted pursuant thereto.



Mr. Fred Lafser

CONCLUSION

It is the opinion of this office that the point source discharges of pollutants from federal facilities within the State of Missouri are subject to the same NPDES program requirements as are any other point source discharges of pollutants subject to the Missouri Clean Water Law and the regulations adopted pursuant thereto.

The foregoing opinion, which I hereby approve, was prepared by my assistant Robert M. Lindholm.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

February 5, 1979

OPINION LETTER NO. 55  
Answer by letter-Allen

Mr. Stephen C. Bradford  
Commissioner of Administration  
Room 125, State Capitol Building  
P. O. Box 809  
Jefferson City, Missouri 65102



Dear Commissioner Bradford:

This replies to your request for an opinion concerning the authority of your office to require the University of Missouri to obtain approval from the Office of Administration for the acquisition of electronic data processing equipment and related services and follow electronic data processing procurement procedures that have been established by your office.

We have reviewed the appropriate statutes and constitutional provisions, particularly, the Omnibus Reorganization Act of 1974, Section 15.9, Appendix B, RSMo Supp. 1975, and Article IX, Section 9(a), Missouri Constitution 1945. The latter section of the Constitution provides:

"The government of the State University shall be vested in a board of curators consisting of nine members appointed by the governor, by and with the advice and consent of the senate."

Section 15.9 of the Reorganization Act refers to the powers of the Commissioner of Administration to control and acquire electronic data processing equipment for the executive department of the state of Missouri.

In this connection, we enclose Opinion No. 5 issued January 29, 1934, wherein it was held that the state purchasing

Mr. Stephen C. Bradford

law is not applicable to the University of Missouri because of the constitutional provision which was essentially the same then as it is now. This opinion was reaffirmed in Opinion No. 82 issued October 9, 1968, copy enclosed, wherein it was held again that the state purchasing agent act does not apply to purchases made by the University of Missouri. It is our belief that Section 15.9 of the Omnibus Reorganization Act of 1974, which provides that the Commissioner of Administration is authorized to coordinate and control the acquisition and use of electronic data processing and automatic data processing in the executive branch of state government, is not applicable to the University of Missouri.

Yours very truly,

JOHN ASHCROFT  
Attorney General

Enclosures: Op. No. 5  
Barnett, 1-29-34  
  
Op. No. 82  
Cantrell, 10-9-68

*Attorney General of Missouri*

JEFFERSON CITY

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

65101

March 30, 1979

OPINION LETTER NO. 56  
Answer by Letter - Klaffenbach

Honorable Flavel J. Butts  
State Representative, District 132  
Room 106-A, Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Butts:

This letter is in response to your questions asking:

"(1) Do County Courts in a third class county have the authority to require purchase of all materials be done through the County Court.

"(2) Do County Courts in a third class county have the authority to require purchase orders be obtained before purchases can be made."

In our Opinion No. 80-1971, we concluded that Section 50.660, RSMo, applies to third class counties. We have enclosed a copy of that opinion and inasmuch as Section 50.660 is quoted in full in that opinion we will not quote it in full here. However, the pertinent portion of Section 50.660 provides:

"All contracts shall be executed in the name of the county by the head of the department or officer concerned, except contracts for the purchase of supplies, materials, equipment or services other than personal made by the officer in charge of purchasing in any county having the officer. . . ."

Honorable Flavel J. Butts

A third class county has no statutory authority to provide for a purchasing officer, therefore, in such counties only the first part of the provision quoted is applicable. Thus, it is our view that the authority to execute such contracts is vested in the head of the department or officer concerned, to wit, the separate statutory county officers, and that the county court has only the authority to execute and control, except through the budget, contracts for purchases in which the county court itself is concerned.

Accordingly, we conclude that such a county court does not have the authority to require that all purchase of materials be made through the county court or to require that purchase orders be obtained before purchases can be made.

We are also of the view that our Opinion No. 19, dated March 7, 1940, to Coyne, was incorrect in its interpretation of Section 50.660 in that such opinion concluded that the county court only must purchase supplies for county offices except that of the office of the sheriff. We believe that such a construction was clearly in error in light of the quoted provisions of 50.660. Therefore, we are withdrawing such opinion.

Additionally, Opinion No. 73, dated April 3, 1937, to Rathbun, and Opinion No. 96, dated September 2, 1953, to Wheeler, were issued prior to the amendments to Chapter 50 which made Section 50.660 to applicable to such counties. Accordingly, such opinions are no longer appropriate and are withdrawn.

Very truly yours,

JOHN ASHCROFT  
Attorney General

Enclosure:  
Op.No. 80-1971

NOTE: [5-23-1996] The portion of this opinion which addresses the legality, under the Sunshine Law, Sections 610.010 et seq., of voting by secret ballots in open meetings is no longer valid. Attorney General Opinion Letter No. 139, McBride, 1981, expresses the current view of this office on this issue.

*Attorney General of Missouri*

JEFFERSON CITY

(314) 751-3321

JOHN ASHCROFT  
ATTORNEY GENERAL

65101

February 7, 1979

OPINION LETTER NO. 57

Honorable Larry E. Mead  
Representative, District 111  
Room 203-E, Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Mead:

This is in answer to your recent opinion request reading as follows:

"Whether a county central committee of either the Democratic or Republican party may cast their votes by secret ballot to conceal the way in which individual members of that committee have voted. This question has recently arisen as a result of a county committee vote taken in Boone County to nominate a state senatorial candidate, and has arisen on past occasions when such committees have either nominated people for special elections or when recommendations have been made for appointments to elected offices by the Governor. The basic question is whether a paper ballot vote which in reality conceals the way individual committee members vote, is acceptable, or is it evasion of the open meetings law."

The term "public governmental body" is defined in Section 610.010(2), H.B. No. 882 of the 79th General Assembly. We enclose Opinion No. 103, rendered September 8, 1976, to Representative John A Sharp, which holds that the St. Louis Republican Central Committee is a "public governmental body" as defined in Section 610.010(2), RSMo Supp. 1975. Such opinion holds that the meetings of such committee are subject to the "Sunshine" law.

Honorable Larry E. Mead

While there have been some amendments to the definition of "public governmental body" in H.B. No. 882, it is our view that the reasoning and the holding in Opinion No. 103-1976 is still valid and that political committees are "public governmental bodies" and are subject to the provisions of the Sunshine law. Therefore, it is our view that the meeting of a county central committee or the meeting of a senatorial or other political committee for the purpose of making a nomination to office to fill a vacancy is the meeting of a public governmental body and that such a meeting is subject to the Sunshine law unless specifically exempted therefrom.

Section 610.010(3), H.B. No. 882, of the 79th General Assembly, defines "public meeting" as follows:

"'Public meeting', any meeting, formal or informal, regular or special, of any public governmental body, at which any public business is discussed, decided or public policy formulated;"

While there is no definition of the term "public business" in the Sunshine law, it is clear that the nomination of a candidate for public office is the transaction of "public business." It appears, therefore, that the meeting of a political committee at which a person is to be nominated for public office is a "public meeting" within the meaning of the Sunshine law.

"Public vote" is defined in Section 610.010(5), H.B. No. 882, 79th General Assembly, as follows:

"'Public vote', any vote cast at any public meeting of any public governmental body."  
(Emphasis ours)

Section 610.025, RSMo Supp. 1975, provides that certain meetings, votes, or records may be closed meetings, closed votes, or closed records. We find none of the exceptions in Section 610.025 or any other statute applicable so as to exempt the meeting of a political committee from the provisions of the Sunshine law when such meeting is for the purpose of making nominations for public office.

It therefore appears that the meeting of a political committee to nominate a candidate to an office is a "public meeting" and that a vote taken thereat is a "public vote" within the meaning of the Sunshine law.



Honorable Larry E. Mead

Section 610.015, RSMo Supp. 1975, provides as follows:

"Except as provided in section 610.025, and except as otherwise provided by law, all public votes shall be recorded, and if a roll call is taken, as to attribute each 'yea' and 'nay' vote, or abstinence if not voting, to the name of the individual member of the public governmental body, and all public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication. (Emphasis ours)

It is clear from the definition of "public vote" that any and all votes taken at a political committee meeting at which nominations for public office shall be made constitute public votes and that under the provisions of Section 610.015, such votes shall be recorded. However, it appears that the yeas and nays are to be listed following the name of the persons who participated in such vote only if a roll call is taken. The provision that the yea or nay must be attributed to each member casting a vote only if a roll call vote is taken indicates that a vote can be "recorded" without attributing a yea or nay vote to each individual voting at such meeting.

In the case of Walters v. City of St. Louis, 259 S.W.2d 377 (1953), the Supreme Court of Missouri En Banc was considering an attack on the constitutionality of the earnings tax ordinance of the City of St. Louis. One of the contentions made was as follows, l.c. 380:

"(1) The enabling act of the 66th General Assembly upon which the ordinance is predicated, to wit: House Substitute for House Bill No. 50, now §§ 92.110-92.200 RSMo 1949, V.A.M.S., is violative of the following provisions of the Constitution of Missouri, V.A.M.S.:

\* \* \*

"(c) Said House Bill No. 50 was not enacted in compliance with Article III, § 22, requiring each committee of the House and Senate to which a bill is referred to keep a record of its proceedings and report the vote of its members to be filed with all reports thereon."

Honorable Larry E. Mead

(Section 22 of Article III of the Constitution of Missouri provides in part as follows.)

". . . Each committee shall keep such record of its proceedings as is required by rule of the respective houses and this record and the recorded vote of the members of the committee shall be filed with all reports on bills."

Regarding the contention that such constitutional provision required the names of the individual members and how each of them voted, the court said, l.c. 384:

"Appellants insist that the report as made is insufficient in that it does not set forth the names of the individual members and how each of them voted. In support of that contention they cite many cases in an effort to establish that the provisions of said Sec. 22 are mandatory and quote extended excerpts from the debates on this section during the Constitutional Convention in an effort to establish that the construction they place upon the meaning of § 22 is its intentment. Respondents cite cases and quote excerpts from the debates in an effort to establish the contrary of both contentions made by appellants. No good purpose would be served in a discussion of these cases or debates. This, for the reason that the provision simply does not require the recording of the vote of each of the members. This court would be going far afield in interpolating into the provision language that is not there and then declaring it mandatory. No one can say that the construction placed thereon by the Senate is not a literal compliance with its provisions. This point must be ruled against appellants."

It appears, therefore, that public votes can be "recorded" without listing the vote of each individual member who voted at the meeting and that such listing is required only if a roll call vote is taken. We assume that no roll call vote was taken at the

Honorable Larry E. Mead

meeting about which you inquire. If so, there was no violation of the Sunshine law in failing to list the yea or nay votes of the individual members of the committee who voted.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

Enclosure: Op. No. 103-1976

COOPERATIVE AGREEMENTS:  
DISASTER PLANNING:  
CIVIL DEFENSE:

That irrespective of number or contiguity, counties may, by county court order duly made and entered, participate in cooperative agreements under Article VI, Section 16, Missouri Constitution and Sections 70.210, et seq., RSMo, respecting the establishment of a common disaster planning program required by Section 44.080, RSMo, and may share the cost of the disaster planning office, director and staff thus established.

OPINION NO. 58

March 14, 1979

Mr. F. M. Wilson, Director  
Department of Public Safety  
621 East Capitol Avenue  
Jefferson City, Missouri 65101



Dear Mr. Wilson:

This opinion is in response to your request of January 10, 1979, in which you ask:

"Can contiguous counties, by County Court Order, join together in a common Disaster Planning program which would include sharing the cost of a single Disaster Planning Office, Director and staff."

In your request you also state that:

"Many rural counties of the State do not have sufficient funds to hire a full-time civil defense director. In addition, many counties do not have a need for a full-time civil defense director. Because of this, a civil defense program in many rural counties is non-existent. However, if counties can join together and provide an equal share of the cost, programs can be established in multi-county areas."

Enclosed is a copy of Opinion No. 146 issued by this office May 19, 1972, where, in response to a somewhat similar inquiry by Representative Reisch, we opined that:

Mr. F. M. Wilson

"It is the opinion of this office that counties may cooperate with each other and expend county funds under the provisions of Section 70.210, RSMo 1969 et seq., within appropriate limitations, by becoming members of an association of counties for the purposes of research in the field of local government, providing training for county officials, providing information for the efficient operation of county government and supporting or opposing legislation affecting such counties."

As was the case in the Reisch opinion, supra, the Missouri Constitutional provisions applicable to the questions which you pose in your opinion request are Article VI, Section 14 and Article VI, Section 16, which respectively provide, in that part here pertinent, as follows:

Section 14:

"By vote of a majority of the qualified electors voting thereon in each county affected, any contiguous counties, not exceeding ten, may join in performing any common function or service, . . . and by separate vote may join in the common employment of any county officer or employee common to each of the counties. The county courts shall administer the delegated powers and allocate the costs among the counties. Any county may withdraw from such joint participation by vote of a majority of its qualified electors voting thereon."

Section 16:

"Any . . . political subdivision of this state may contract and cooperate with other . . . political subdivisions thereof, . . . for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

Sections 70.010, et seq., RSMo implement Section 14 and Sections 70.210, et seq., RSMo implement Section 16 above. Section 70.210(2), RSMo includes "counties" within the definition of "political subdivision."

Mr. F. M. Wilson

Both Section 14 (with implementing statutes 70.010, et seq., RSMo) and Section 16 (with implementing statutes 70.210, et seq., RSMo) deal with the ability of counties to join, contract, or cooperate with one another in performing a common function or service and were newly enacted in the Missouri Constitution of 1945. Reference to paragraph 4 of your opinion request indicates that your concerns arise primarily out of the apparent conflict in requirements under these provisions which must be met in order to enable counties to join, contract or cooperate in performing common functions or services. In this connection, your attention is directed to that portion of the enclosed Reisch opinion wherein this office opined that no such conflict in requirements is posed by these two constitutional provisions or their implementing statutes:

"Although it appears at first glance that there is a conflict between Sections 14 and 16 of Article VI of the Missouri Constitution and the statutory provisions which implement such sections, it is our view that no such conflict exists. That is, Sections 70.010 to 70.090, which were enacted contemporaneously with Section 14, provide a procedure for petition (Section 70.020) and election (Sections 70.030 to 70.050) to adopt a proposition for the joint performance of common services by contiguous counties not exceeding ten in number. On the other hand, Sections 70.210 to 70.325, enacted in implementation of Section 16, include 'counties' within the definition of 'political subdivisions' (Section 70.210) and authorize the governing body of such counties, without limitation as to the number or location of such counties, to cooperate under contract in performing common services provided such cooperative action is within the scope of such counties' powers. (Section 70.220).

"Keeping in mind that the Constitution is only a limitation on the power of the state legislature and not a grant of power, Hickey v. Board of Education of City of St. Louis, 256 S.W.2d 775 (Mo. 1953), it is our view that Section 16 and Sections 70.210 et seq., are applicable in the premises and that two or more counties whether contiguous or not and without regard to the number of such counties involved may enter into cooperative agreements."



Mr. F. M. Wilson

In accordance with the position taken by this office in the Reisch opinion, supra, it is our view that Article VI, Section 14 and Sections 70.010, et seq., RSMo contemplate a procedure for petition and election to adopt a proposition for the joint performance of common services by contiguous counties not exceeding ten in number, whereas Article VI, Section 16 and Sections 70.210, et seq., RSMo authorize county governing bodies to cooperate under contract in performing common services, irrespective of the number or contiguity of the counties in question, provided the cooperative action is within the scope of such counties' powers. The rationale attendant the issuance of the Reisch opinion, supra, by this office is equally applicable in the instant premises and it is our view that Article VI, Section 16 and Sections 70.210, et seq., RSMo would permit counties, regardless of number or contiguity, to enter into a cooperative agreement relative to the establishment of a local disaster planning program as required by Section 44.080, RSMo. Proposed cooperation among the State of Missouri's poorer counties, where such plans are nonexistent due to insufficient funds, in order to financially enable these counties to comply with the requirements of Missouri law would appear to be a proper county objective.

Additionally, as also was noted in the Reisch opinion, supra, reference to Section 70.250, RSMo (respecting methods of financing) and Section 70.260, RSMo (respecting provisions which may be included in joint contracts of this nature) indicates that counties may not only share in financing the expenses attendant such an agreement, but also may provide for the selection and compensation of officers to supervise such a joint planning or services operation. Reference to Section 70.230, RSMo indicates that the power to institute a cooperative agreement of this sort may be exercised by order of the county court, in that it provides:

"Any municipality may exercise the power referred to in section 70.220 by ordinance duly enacted, or, if a county, then by order of the county court duly made and entered, . . ." (Emphasis supplied).

#### CONCLUSION

It is the opinion of this office that irrespective of number or contiguity, counties may, by county court order duly made and entered, participate in cooperative agreements under Article VI, Section 16, Missouri Constitution and Sections 70.210, et seq., RSMo respecting the establishment of a common disaster planning program required by

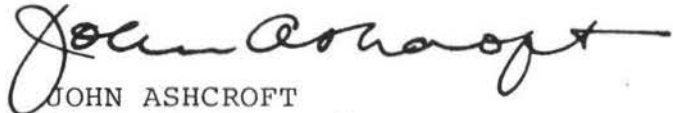


Mr. F. M. Wilson

Section 44.080, RSMo and may share the cost of the disaster planning office, director and staff thus established.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Weldon W. Perry, Jr.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

Enclosure: Op. No. 146  
5/19/72, Reisch

MENTAL HEALTH:

Emergency mental health coordinators may not be held civilly or criminally liable for requesting or authorizing emergency involuntary civil commitments pursuant to their authority under § 202.123.3, S.B. 423, 80th Gen. Assembly provided that such commitment was performed in good faith and without gross negligence.

November 14, 1979

OPINION NO. 59

Representative Marion G. Cairns  
State Capitol, Room 105-C  
Jefferson City, Missouri 65101

Dear Representative Cairns:

This opinion is in response to your question asking the following:

Do Emergency Mental Health Coordinators, employed in private health care facilities, who are appointed by the Department of Mental Health in order to comply with the provisions of Senate Bill 651, passed by the Second Session of the 79th General Assembly, have immunity from suits filed by patients whose commitment they request or authorize? Such immunity seems to be authorized by sections 202.200 and 202.203 of Senate Bill 651.

Sections 202.200, S.B. 423, 80th Gen. Assembly provides:

202.200. No officer of a public or private agency, mental health or retardation facility, nor the head or designee of the head, attending staff or consultants of any such agency or facility, nor any mental health coordinator, or any other public official performing functions necessary for the administration of chapter 202, nor any peace officer responsible for detaining a person pursuant to chapter 202 shall be civilly or criminally liable for detaining, conditionally releasing, or

discharging a person pursuant to this chapter at or before the end of the period for which he was admitted or committed for evaluation or treatment provided that such duties were performed in good faith and without gross negligence.

Section 202.203 provides:

202.203. No person making or filing an application alleging that a person should be involuntarily detained, certified, or committed, treated, or evaluated pursuant to this chapter shall be rendered civilly or criminally liable if the application was made and filed in good faith.

Under § 202.010(13), RSMo, a "mental health coordinator" is a psychiatrist, psychologist, psychiatric nurse or psychiatric social worker who has knowledge of the laws of this state concerning civil commitment and who is appointed by the Director of the Department of Mental Health or his designee to perform certain duties specified in Chapter 202 within a designated geographic area. Section 202.110, RSMo, authorizes the Director of the Department of Mental Health to "appoint such personnel including mental health coordinators as are necessary to carry out the provisions of this act."

The position of "emergency mental health coordinator" was created by Department of Mental Health regulation (Operating Regulation No. 186, revised December 29, 1978, attached) in anticipation that the number of mental health coordinators appointed to perform the tasks specified in Senate Bill 651 would prove insufficient to deal with the great volume of involuntary civil commitments in the public and private mental health facilities in this state. In section 1 of Operating Regulation No. 186, the term "emergency mental health coordinator" is defined as "a mental health coordinator, as defined in Chapter 202, RSMo, who serves on a part-time basis and who has the limited powers and duties as specified in this regulation" (emphasis supplied). As this regulation further states, the sole power of the emergency mental health coordinator is to authorize the emergency admission and detention of persons under the "imminent harm" provision, § 202.123.3, S.B. 423, 80th Gen. Assembly, and this only when both the emergency mental health coordinator and a licensed physician (§ 202.010[10], RSMo) concur that such admission is appropriate.

As is evident from the above-emphasized language of Operating Regulation No. 186, the position of emergency mental health coordinator is nothing more than a subclass

Rep. Marion G. Cairns

of mental health coordinator, as defined and authorized under Senate Bill 651; therefore, it remains only to be determined to what extent mental health coordinators in general may be held liable for emergency involuntary detentions under § 202.123.3 which they authorize or request in the course of their official duties.

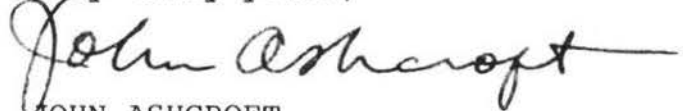
The standard for such liability is clearly stated in § 202.200, quoted above; under that section, mental health coordinators, may not be held civilly or criminally liable for detaining a person pursuant to §§ 202.123, 202.127, S.B. 423, 80th Gen. Assembly as long as such action is performed "in good faith and without gross negligence." The only situation in which a person would actually be detained as the result of the action of a mental health coordinator (as compared to alleging that the person should be detained after a hearing--see § 202.203, RSMo) is one involving the emergency commitment provision, § 202.123.3, RSMo. Accordingly, it must be concluded that persons occupying the position of mental health coordinator, including those designated as "emergency mental health coordinators," may be held civilly or criminally liable for requesting or authorizing an involuntary civil commitment under § 202.123.3 only when such commitment was performed in bad faith or with gross negligence.

#### CONCLUSION

It is the conclusion of this office that emergency mental health coordinators may not be held civilly or criminally liable for requesting or authorizing emergency involuntary civil commitments pursuant to their authority under § 202.123.3, S.B. 423, 80th Gen. Assembly provided that such commitment was performed in good faith and without gross negligence.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John M. Morris.

Very truly yours,



JOHN ASHCROFT  
Attorney General

Attachment

February 8, 1979

OPINION LETTER NO. 60  
Answer by letter-Hyatt

Dr. Arthur L. Mallory, Commissioner  
Department of Elementary and  
Secondary Education  
Jefferson State Office Building  
Jefferson City, Missouri 65101



Dear Dr. Mallory:

This letter is in response to your request for our review and certification of the Department of Elementary and Secondary Education's Fiscal Year 1980 Annual Program Plan under Part B of the Education of the Handicapped Act, as amended by Public Law 94-142 (20 U.S.C. §§ 1401, et seq., as amended), and for Public Law 89-313 (20 U.S.C. § 241(a)(5)).

In addition to the Education of the Handicapped Act, as amended, and regulations promulgated pursuant thereto (45 CFR Part 121a (August 23, 1977)), our review has taken into consideration Article IX, Sections 1(a), 2(a), and 2(b), Missouri Constitution; Sections 161.092 and 162.670 to 162.995, RSMo Supp. 1975, as amended, and related provisions.

It is the opinion of this office that:

1. The Missouri State Department of Elementary and Secondary Education is the state educational agency as defined in 20 U.S.C. § 1401(7) and has authority under state law to submit the plan and to administer or to supervise the administration of the plan.
2. All plan provisions are consistent with state law.

Yours very truly,

JOHN ASHCROFT  
Attorney General

MENTAL HEALTH:  
APPROPRIATIONS:

The Department of Mental Health is headed by the Director of the Department and the legislature cannot appropriate money to the Mental Health Commission for the Commission to allocate to various facilities of the Department of Mental Health.

OPINION NO. 61

February 20, 1979

Honorable Ron Bockenkamp  
Representative, District 128  
Room 115, State Capitol Building  
Jefferson City, Missouri 65101

Honorable Joe D. Holt  
Representative, District 109  
Room 309, State Capitol Building  
Jefferson City, Missouri 65101

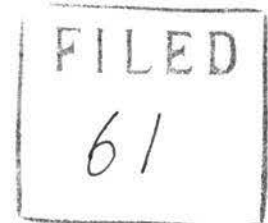
Dear Messrs. Bockenkamp and Holt:

This is in response to your request for an official opinion on the following questions:

- "1. Is the Department of Mental Health headed by the Mental Health Commission or a director appointed by the Mental Health Commission?
- "2. Can the commission have funds appropriated to it which it would then allocate to various subparts or agencies of the Department of Mental Health?"

Furthermore, you have stated the following in your request:

"The Governor in his executive budget has stated that the 'Mental Health Commission is the statutory head of the Department of Mental Health.' He recommends that as the head of the department, certain financial resources be appropriated to the commission, and that the commission thereafter



have the authority to allocate those funds consistent with the commission's strategic plans for the department."

The recommendation of the Governor is contained in an appropriation bill, House Bill No. 9, First Regular Session, 80th General Assembly. The particular section provides as follows:

"Section 9.010. To the Department of Mental Health--  
Mental Health Commission  
For improved institutional care and treatment  
Personal Service and Expense and Equipment  
From General Revenue Fund . . . . . \$2,825,033."

Concerning your first question, Art. IV, §37(a), of the Missouri Constitution explicitly provides that the Department of Mental Health shall be under the control of the Department director as follows:

"The department of mental health shall be in charge of a director who shall be appointed by the commission, as provided by law, and by and with the advice and consent of the senate. The department shall provide treatment, care, education and training for persons suffering from mental illness or retardation, shall have administrative control of the state hospitals and other institutions and centers established for these purposes and shall administer such other programs as provided by law." (Emphasis added.)

During the first regular session of the 79th General Assembly in 1977, the legislature enacted House Bill 841, which repealed and reenacted §202.035 to conform with the constitutional mandate in §37(a), Art. IV. Section 202.035, RSMo Supp., 1977, provides as follows:

"The head of the department of mental health shall be the director of the department who shall be appointed by the mental health commission, by and with the advice and consent of the senate. The director shall serve at the pleasure of the commission and his salary shall be set by the commission at an amount not to exceed \$40,000 per year." (Emphasis added.)

In attorney general's opinion No. 161, dated April 4, 1974, to Harold P. Robb, M.D. (copy enclosed), we held that §9.1 of the Omnibus Reorganization Act of 1974, Appendix



B, RSMo Supp., 1975, is unconstitutional to the extent that it attempts to make the Mental Health Commission the head of the Department of Mental Health. The provisions of §202.035 as amended are in conformance with §37(a) Art. IV of the Constitution. Thus, the statutory head of the Department is the Director.

As to your second question, the State Mental Health Commission was established by the Omnibus State Reorganization Act of 1974, §9.2, Appendix B, RSMo Supp. 1975 which provides as follows:

"On the effective date of this act a 'state mental health commission', composed of seven members, shall be established and it shall be the successor to the former state mental health commission and it shall have all the powers, duties and responsibilities of the former commission."

In subsection 3 of §9 of the Reorganization Act, the "powers, duties, and functions" assigned by law to the officials of the former division of mental health of the Department of Public Health and Welfare were transferred to the Department of Mental Health.

The "powers, duties, and functions" of the State Mental Health Commission are set forth as follows in subsection 6 of §202.031, RSMo 1969:

"6.(1) The commission shall advise the director of the [department] of mental health as to all phases of professional standards including patient care, training of personnel, establishment of treatment programs, obtaining adequate staffs, establishment of medical and statistical records and operation of practices in order that they may be compatible with professional requirements.

"(2) The commission shall advise the director in the approval and guidance of research projects and distribution of research funds.

"(3) The commission shall assist the director in establishing and maintaining the best possible practices in all mental health facilities."

Thus, as to any responsibility to staff and to operate the various facilities of the Department, the Commission has merely an advisory role as to what standards should be employed to obtain adequate staffs and establish professional practices under subdivision (1) of subsection 202.031.6. Furthermore, they are to "assist the director in establishing and maintaining . . . practices" in the facilities under subdivision (3) of the subsection. Under the Constitution and applicable statute, they do not have any active or primary function to allocate staff, expenses, and equipment to the various facilities.

When subsection 6 of §202.031 which provides that the Commission shall be advisory in nature is read in conjunction with §37(a), Art. IV, of the Missouri Constitution and §202.035, RSMo Supp. 1977, which provide that the Director of the department is in charge of the department, it is clear that the Director has the statutory duty and power to administer the department with advice and assistance from the Commission.

If the General Assembly in its appropriation bill were to adopt the recommendation of the Governor to appropriate \$2,825,033 to the Mental Health Commission for it to use to improve institution-based care consistent with its strategic plans, the General Assembly would be attempting to modify the statutory duties, powers, and functions of the Commission as expressed in §202.031, supra, to enable the commission to have administrative duties without statutory authority. It has been, and is, the holding of the courts of this State and the holding of this office that the legislature cannot legislate in an appropriations act. State ex rel Davis v. Smith, 75 S.W.2d 828, 830 (Mo. banc 1934); State ex rel Gaines v. Canada, 113 S.W.2d 783, 790 (Mo. banc 1938), reversed on other grounds 305 U.S. 337; Attorney General's Opinion 152, dated March 27, 1974, to Alfred C. Sikes, and Attorney General's Opinion 401, dated August 27, 1971, to Donald L. Manford.

In Opinion No. 10 to I.T. Bode, Director of the Missouri Conservation Commission, June 11, 1953, a copy of which is enclosed, this office stated:

"The law is well established in this State that the General Assembly cannot legislate by an appropriation act. Legislation of a general character cannot be included in an appropriation bill. To do so would violate the provisions of the Constitution of Missouri, namely, section 23, Art. III, . . . which . . . reads:

'No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which monies are appropriated.'"

Consequently, it is our opinion that if the legislature were to adopt the Governor's recommendation to appropriate money to the Commission for it to spend in its discretion, the appropriation would be invalid as an attempt to legislate in an appropriations bill.

We do not believe that it is necessary to rule at this time whether the legislature could enact a statute which would authorize the Mental Health Commission to spend money appropriated to such Commission for operational purposes of the Department of Mental Health in view of the provisions of §37(a), Art. IV of the Constitution.

#### CONCLUSIONS

It is the opinion of this office that the Department of Mental Health is headed by the Director of the Department and the legislature cannot appropriate money to the Mental Health Commission for the Commission to allocate to various facilities of the Department of Mental Health.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Reginald H. Turnbull.

Very truly yours,



JOHN ASHCROFT  
Attorney General

Enclosures:      Op. No. 161  
                     4-4-74, Robb

                     Op. No. 152  
                     3-27-74, Sikes

                     Op. No. 401  
                     8-27-71, Manford

                     Op. No. 10  
                     6-11-53, Bode

JUDGES:  
COMPENSATION:

Probate ex officio magistrate  
judges in counties of the second  
class with populations of less

than thirty thousand were, on January 1, 1979, entitled to the compensation provided by law for such probate judges under the provision of subsection (3) of Section 481.205, as amended by S.B. No. 950, 79th General Assembly, 2nd Regular Session, relative to second class counties having a population of less than sixty-five thousand in the sum of thirty-two thousand eight hundred dollars; and that additional magistrates in such counties were entitled to payment pursuant to subsection (3) of Section 482.150, as amended by House Bill No. 521, 79th General Assembly, 1st Regular Session, in the sum of thirty-two thousand nine hundred dollars. On and after January 2, 1979, such probate ex officio magistrate judges and additional magistrate judges became associate circuit judges entitled to the same compensation provided when they were probate ex officio magistrate judges and additional magistrate judges prior to January 2, 1979. That is, the salary of probate ex officio magistrate judges in second class counties of less than thirty thousand population who became associate circuit judges January 2, 1979, is thirty-two thousand eight hundred dollars. The salary of additional magistrate judges who became associate circuit judges January 2, 1979, in such counties is thirty-two thousand nine hundred dollars.

OPINION NO. 62

May 3, 1979

Honorable James L. Smith  
Representative, 46th District  
Room 115F, Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Smith:

This opinion is in response to your question asking:

"A. What are the respective salaries of the following judges in second class counties with a population of less than 30,000 on January 1, 1979?

1. Probate and ex-officio Magistrate;
2. Additional Magistrate.

Honorable James L. Smith

"B. What are the respective salaries of the following judges in second class counties with a population of less than 30,000 on January 2, 1979?

1. Associate Circuit Judges of Probate Divisions and Ex-Officio Associate Circuit Judges who were on January 1, 1979, Probate and Ex-Officio Magistrates;

2. Associate Circuit Judges who were on January 1, 1979, Additional Magistrates."

Section 482.150, as amended by House Bill No. 521, 1st Regular Session, 79th General Assembly, provides:

"The salaries of all magistrates shall be paid by the state, except that the state shall not pay the salaries of additional magistrates whose offices are created by order of the circuit court as provided for in article V, section 18 of the constitution; but the districts assigned to the additional magistrates shall be designated as 'additional magistrate districts' and the salaries of such magistrates shall be paid by the county. The annual salaries of magistrates payable in equal monthly installments shall be as follows:

"(1) In all counties having a population of less than thirty thousand inhabitants, the probate judge shall serve as ex officio magistrate and shall receive the compensation provided by law for such probate judges. No additional compensation shall be paid for his service as ex officio magistrate;

"(2) In all counties having a population of more than thirty thousand but less than sixty-five thousand, except in any county of the second class, the sum of twenty-seven thousand nine hundred dollars;

"(3) In all counties of the second class and in all counties having a population of more than sixty-five thousand but less than four hundred thousand inhabitants, except in any county of the first class, the sum of thirty-two thousand nine hundred dollars;



Honorable James L. Smith

"(4) In all counties of the first class, and in all cities of more than six hundred thousand, the sum of thirty-three thousand dollars."

House Bill No. 521 amended Section 482.150, RSMo Supp. 1976, essentially leaving the first unnumbered paragraph thereof the same and reenacting subsection (1) with no change. Subsection (2) was amended to put in the exception with respect to counties of the second class and to raise the compensation, with respect to subsection (2) classes, to twenty-seven thousand nine hundred dollars. Subsection (3) was amended to include the reference to second class counties and to raise the compensation therein to thirty-two thousand nine hundred dollars. Subsection (4) thereof was amended solely to raise compensation in such counties to thirty-three thousand dollars. The salaries provided for in such Section 482.150 became effective January 1, 1978.

The same House Bill No. 521 also amended Section 481.205, RSMo Supp. 1976, and provided that the salary amendments to such section would become effective January 1, 1978. The amendments made to Section 481.205 by House Bill No. 521 related primarily to increases in the compensation of such judges of the probate court and did not include the present reference to counties of the second class. Senate Bill No. 489, 1st Regular Session, 79th General Assembly, repealed Section 481.205 of House Bill No. 521 of the 79th General Assembly, retaining the salary increases of House Bill No. 521, but omitting the reference in Section 1 of Section 481.205 of House Bill 521, relating to counties with a court of common pleas or counties where the probate court has two offices. The first reference to second class counties was inserted by Senate Bill No. 950, 2nd Regular Session, 79th General Assembly, which repealed Senate Bill No. 489. Senate Bill No. 950, effective August 13, 1978, amended Section 481.205, adding the exception in subsection (2) relating to the counties of the second class and, adding also the salary classification relative to counties of the second class having a population of less than sixty-five thousand which is now found in renumbered paragraph 3. Previous paragraph 3 was reenacted in the same form and renumbered in paragraph 4 of Senate Bill No. 950. Therefore, as amended by Senate Bill No. 950, Section 481.205 now provides:

"Each probate judge shall receive for his services an annual compensation payable in equal monthly installments as follows:

"(1) In counties having a population of thirty thousand or less, the sum of twenty-seven thousand dollars. Probate judges in such counties shall serve as ex officio magistrates, but shall receive no additional compensation for such service. The salary of such probate ex officio magistrates shall be paid out of the state treasury;

"(2) In counties having a population of more than thirty thousand but less than sixty-five thousand, except in any county of the second class, the sum of twenty-seven thousand eight hundred dollars;

"(3) In counties of the second class having a population of less than sixty-five thousand, the sum of thirty-two thousand eight hundred dollars;

"(4) In counties having a population of sixty-five thousand or more and in the city of St. Louis, a sum equal to the salary of a judge of the circuit court in that county or city."

It is our understanding that certain counties having a population of less than thirty thousand became second class counties on January 1, 1979. See Russell v. Callaway County, 575 S.W.2d 193 (Mo. Banc 1978), in which the Supreme Court of Missouri concluded that Callaway County was entitled to become a second class county, that the provisions of Section 48.020.2, RSMo, as amended, authorizing an election to decide classification are not constitutional and that such election was not effective to delay automatic qualification as a second class county.

At the outset, we note that Section 482.150, with respect to the classifications for the compensation of magistrates, contains no provision respecting the salary classification of additional magistrates in counties of less than 30,000 inhabitants. Such classification, i.e., subsection 1 of Section 482.150, refers only to probate ex officio magistrates. It seems, however, that the legislature was required by the provisions of repealed Section 18 of Article V of the Missouri Constitution to provide for the payment of additional magistrate positions properly created in any county. This is because the provisions of such section have been



Honorable James L. Smith

held to be self-enforcing. State ex rel. Randolph County v. Walden, 206 S.W.2d 979 (Mo. Banc 1947). Although the legislature has failed to make provisions for such pay classification, a construction which would provide no pay for such an office would be absurd. State ex rel. Hall v. Bauman, 466 S.W.2d 177 (K.C.Ct.App. 1971). Such additional magistrates are now, under the new constitutional provisions and under the statutes (see Section 478.320 quoted below), associate judges. Therefore, it is our view that such additional magistrates in counties of under 30,000 population (which are not second class counties) should receive the same compensation as that provided for probate ex officio magistrates in such counties under subsection 1 of Sections 481.205 and 482.150, twenty-seven thousand dollars.

The question arises with respect to the determination of the respective salaries of the judges you describe because both Sections 481.205 and 482.150, as amended, contain new matter providing expressly for compensation for judges in second class counties. This new category which was introduced, as we noted, conflicts with the category which was carried over in such amendments relating to counties having a population of thirty thousand or less. It is our view that since the new matter in both instances conflicts with the old matter which was reenacted, the new category relating to such judges in second class counties should be given effect.

One rule of statutory construction is that the last expression of the legislature should normally prevail in the absence of reason to the contrary. This rule is generally expressed with respect to different statutes. State on Inf. of Taylor v. American Ins. Co., 200 S.W.2d 1 (Mo. Banc 1946). However, we believe that it is applicable here because of the fact that the provisions with respect to the specified second class counties are of later enactment than those respecting counties having a population of less than thirty thousand the latter being last amended only with respect to the compensation authorized for that category but not with respect to the category itself.

This means then that although such judges would have come within the less than thirty thousand population category prior to such amendments the only proper way to give effect to the intent of the legislature in making such amendments relating to second class counties is to classify such judges according to their status as judges in counties of the second class, as provided, and not according to their classification as judges in counties having a population of thirty thousand or less.

Honorable James L. Smith

As so interpreted on January 1, 1979, such probate ex officio magistrate judges in second class counties with a population of less than thirty thousand would be entitled to the compensation provided for by law for such probate judges under subsection (3) of Section 481.205. Under that subsection probate judges in such second class counties are entitled to the sum of thirty-two thousand eight hundred dollars.

In addition, additional magistrates in office on January 1, 1979, in counties of the second class with a population of less than thirty thousand, were entitled to the compensation set forth in subsection (3) of Section 482.150 for such additional magistrates in counties of the second class in the amount of thirty-two thousand nine hundred dollars.

House Bill No. 1634 which was the court revision bill enacted by the Second Regular Session of the 79th General Assembly became effective, except as otherwise expressly provided therein, January 2, 1979. Section 482.155, as enacted by House Bill No. 1634, provides:

"The term 'magistrate' as used in section 482.150 shall mean associate circuit judge, except such terms shall not include associate circuit judges who serve as the judge of the probate division of the circuit court. Notwithstanding the provisions of section 482.150, the salaries of all associate circuit judges shall be paid by the state."

Clearly Section 482.155 provides that the salaries of such associate circuit judges who were formerly additional magistrates are now to be paid by the state as of January 2, 1979, notwithstanding the contrary provisions of Section 482.150 which provides that additional magistrates shall be paid by the county. We note also that Section 478.320 of House Bill No. 1634 provides in pertinent part:

"1. In counties having a population of thirty thousand or less there shall be one associate circuit judge. . . .

"2. In addition to the associate circuit judges authorized by subsection 1 of this section, one additional associate circuit judge is authorized for each magistrate which was provided in the county pursuant to the provisions of subsection 3 of section 482.010, RSMo, in effect on January 1, 1979. Additional associate circuit judges may be authorized in particular counties by law hereafter enacted. "

Honorable James L. Smith

It is therefore our view that under House Bill No. 1634 such judges who were additional magistrates in second class counties having a population of less than 30,000 are now associate circuit judges and from January 2, 1979, are entitled to the compensation authorized for magistrates under subsection (3) of Section 482.150, thirty-two thousand nine hundred dollars.

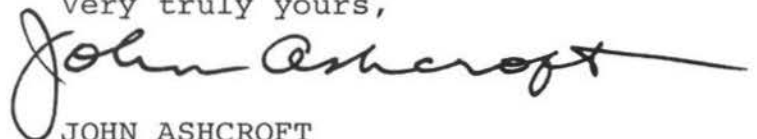
The probate judge ex officio magistrate who became an associate circuit judge on January 2, 1979, in the classification you describe, in our view, should be paid as a judge of a second class county having a population of less than sixty-five thousand, in the sum of thirty-two thousand eight hundred dollars pursuant to subsection (3) of Section 481.205.

#### CONCLUSION

It is the opinion of this office that probate ex officio magistrate judges in counties of the second class with populations of less than thirty thousand were, on January 1, 1979, entitled to the compensation provided by law for such probate judges under the provision of subsection (3) of Section 481.205, as amended by S.B. No. 950, 79th General Assembly, 2nd Regular Session, relative to second class counties having a population of less than sixty-five thousand in the sum of thirty-two thousand eight hundred dollars; and that additional magistrates in such counties were entitled to payment pursuant to subsection (3) of Section 482.150, as amended by House Bill No. 521, 79th General Assembly, 1st Regular Session, in the sum of thirty-two thousand nine hundred dollars. On and after January 2, 1979, such probate ex officio magistrate judges and additional magistrate judges became associate circuit judges entitled to the same compensation provided when they were probate ex officio magistrate judges and additional magistrate judges prior to January 2, 1979. That is, the salary of probate ex officio magistrate judges in second class counties of less than thirty thousand population who became associate circuit judges January 2, 1979, is thirty-two thousand eight hundred dollars. The salary of additional magistrate judges who became associate circuit judges in such counties January 2, 1979, is thirty-two thousand nine hundred dollars.

The foregoing opinion which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

65101

September 26, 1979

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

OPINION LETTER NO. 63

Honorable Kenneth W. Shrum  
Prosecuting Attorney  
Bollinger County  
P. O. Box 338  
Marble Hill, Missouri 63764

Dear Mr. Shrum:

This letter is in response to your question asking:

"May the Bollinger County Library Board of Trustees convey by lease the use of a room of the Bollinger County Library to the Bollinger County Historical Society?"

You also state:

"The Bollinger County Historical Society is desirous of having a place to hold meetings and store their records. In order to provide such a place, the Bollinger County Historical Society has offered to build an additional room onto the Bollinger County Library's present building, with all expenses to be paid for by the Historical Society. This additional room is to have title vested in the Bollinger County Library. In return, the Bollinger County Library is to lease the use of this room constructed back to the Bollinger County Historical Society for so long as the Bollinger County

Honorable Kenneth W. Shrum

Historical Society exists and has need for this room. Should the Bollinger County Historical Society ever cease existence, the lease would revert back to the Bollinger County Library, with absolutely no restrictions or reservations."

Essentially, under the facts you state, the Bollinger County Historical Society would build such a room for its own use and use such space without paying any rent for so long as the society wished to use the room.

The Bollinger County Library District is a library district organized under the provisions of Sections 182.010, et seq., RSMo, as amended. We know of no express authority given such a district to make such a lease, and, even if such express authority did exist, its constitutionality would be doubtful.

In this respect we enclose our Opinion No. 288-1969, to Seier, which is self-explanatory.

The Bollinger County Historical Society is, we understand, a not-for-profit organization. It is our view, however, that the views we expressed in Opinion No. 288-1969 apply to not-for-profit as well as for profit corporations and accordingly, we know of no authority, express or implied, for the Bollinger County Board of Trustees to lease such a room to the Bollinger County Historical Society.

Very truly yours,



JOHN ASHCROFT  
Attorney General

Enclosure

Op.No. 288-1969, Seier

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

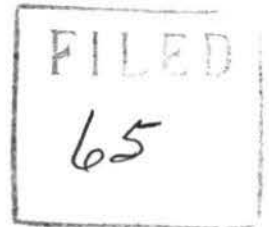
JEFFERSON CITY  
65101

(314) 751-3321

February 6, 1979

OPINION LETTER NO. 65  
Answer by Letter - Klaffenbach

Honorable Nelson B. Tinnin  
State Senator  
25th District  
Senate Post Office  
Jefferson City, Missouri 65102



Dear Senator Tinnin:

This letter is in response to your question asking as to the effect that House Joint Resolution No. 87 of the 79th General Assembly has with respect to certain bills now pending before the General Assembly relating to retirement systems.

House Joint Resolution No. 87 as truly agreed to and finally passed and adopted by the voters and which is presently effective provides as follows:

"JOINT RESOLUTION

Submitting to the voters of Missouri, an amendment to article VII of the constitution of Missouri relating to public officers.

---

That at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 1978, or at a special election to be called by the governor for that purpose, there is hereby submitted to the voters of this state, for adoption or rejection, the following amendment to article VII of the constitution of the state of Missouri:



Honorable Nelson B. Tinnin

Section 1. Article VII, constitution of Missouri, is amended by adding thereto one new section to be known as section 14, to read as follows:

Section 14. The legislative body which stipulates by law the amount and type of retirement benefits to be paid by a retirement plan covering elected or appointed public officials or both, shall, before taking final action of any substantial proposed change in future benefits, cause to be prepared a statement regarding the cost of such change. Such statement of cost shall be prepared by a qualified actuary with experience in retirement plan financing and such statement shall be available for public inspection. The general assembly shall provide by law applicable standards and requirements governing the preparation, content, and disposition of such statement of cost."

We first of all wish to point out that it is our view that it would be inappropriate for this office to attempt to apply this constitutional amendment to specific bills which are presently pending before the General Assembly. To do so would involve us in expressing a view of the constitutionality of a law we might be called on to defend from attack in the courts. Rather, we believe that we should set out what we think to be controlling principles in applying this amendment.

The first question which appears to be raised by the language contained in the amendment is whether public employees who are not public officers are included within the terminology "elected or appointed public officials".

As can be seen from the title given this joint resolution such title relates to an amendment to Article VII of the Constitution of Missouri relating to public officers. The specific language as we have noted refers to "elected or appointed public officials". Our review of the legislative history indicates that the title of the resolution as originally introduced referred to an amendment to Article III of the Constitution of Missouri relating to the legislative power of the General Assembly. Likewise, the body of the bill referred to Article III and would have purported to amend Article III by adding a new section thereto relating to "elected and appointed public officials



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and other public employees". It is clear from the history of this joint resolution that the language "and other public employees" was deleted before the resolution was truly agreed to and finally passed and adopted by the voters. Accordingly the legislative history indicates quite clearly that the amendment as adopted was intended to apply only to plans covering elected or appointed public officials or both, and not persons who are merely public employees but not elected or appointed public officials.

It is our view that the term "public official" is synonymous with "public officer". This seems especially clear here because the title to the amendment refers to "public officers". While there have been various definitions of "public officers" for myriad purposes we believe that the following holding of the Missouri Supreme Court En Banc in State ex rel. Webb v. Pigg, 249 S.W.2d 435, 441 (Mo. 1952) is worthy of note:

"The ultimate test appears to be whether or not, to the person in question, there has been delegated some substantial part of the sovereign power, to be 'independently exercised with some continuity and without control of a superior power other than the law.' Kirby v. Nolte, supra, 164 S.W.2d loc. cit. 8."

"In recent opinions of this court special emphasis has been placed upon whether the particular individual in question performs his duties independently and without control of a superior power other than the law, that is, whether he is endowed by law with the power and authority to use his own judgment and discretion in discharging the sovereign functions of government which have been vested in him by statute and which functions are to be exercised by him for the benefit of the public."

Despite the narrow interpretation given the term "public officer" in the Webb case, the case cited therein, Kirby v. Nolte indicates a lack of uniformity in the court decisions respecting the definition of "public officer" in a constitutional sense. In light of the nature of the amendment we are of the view that the broadest definition should be given to the term "public official", all doubt being resolved in the public's favor.

Clearly many public officials are responsible at least to some extent to other public officials. The true question

Honorable Nelson B. Tinnin

to be resolved then is not whether the official is entirely independent of a higher power but whether the official exercises any sovereign authority without supervision.

The second question which comes to mind is whether the word "substantial" as used in the first sentence is to be given a restrictive or a broad meaning. The word "substantial" has been given many meanings. 40 Words & Phrases "Substantial" p. 757 et seq. It is our view however that an extremely restrictive definition of the word "substantial" would not be consistent with the purpose of the voters in enacting such amendment. Thus we believe that the meaning given the word by the Supreme Court of the State of Washington in In Re Krause's Estate, 21 P.2d 268, 270 (1933) is the meaning which should be adopted, stated as follows:

"'Substantial' is an adjective meaning something worthwhile as distinguished from something without value or merely nominal.  
Webster New International Dictionary .3  
Bouvier's Law Dictionary (3rd Ed.)."

Thus it is our view that it would be difficult to imagine any legislation which effected a change in benefits payable to public officials which would not be essentially "substantial".

The next question arises as to whether the statement of cost is required to show the cost of benefits to both public employees as well as to public officials when the change in benefits affects both public officials and public employees. It is our view that the provision in the amendment referring to "any substantial proposed change in future benefits" refers to future benefits of elected or appointed officials and therefore limits the statement regarding cost to the cost of the benefits to such officials except to the extent that such costs cannot be appropriately severed from the cost of such benefits to other public employees.

An additional question which arises is whether immediate implementation of this amendment by the General Assembly is necessary in order for the amendment to be effective. The amendment clearly provides that the General Assembly shall provide by law applicable standards and requirements governing preparation, content and disposition of such statements of cost. However it is clear that the requirements of the amendment could not be defeated by the failure of the General Assembly to act, and to that extent it is our view that such amendment is self-enforcing. It is also our view that the General Assembly may impose requirements with respect to such retirement plans which are more comprehensive

Honorable Nelson B. Tinnin

than the requirements found in the amendment. Thus the General Assembly may, by appropriate legislation, include such plans covering public employees in addition to public officials and may require actuarial statements with respect to any change in benefits.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

CITIES, TOWNS, & VILLAGE: A public housing authority may act  
PUBLIC HOUSING AUTHORITY: in the capacity of a "parent entity,"  
as that term is defined in 24 C.F.R.  
§ 811.102, and is empowered to designate a not-for-profit corpora-  
tion as its agency or instrumentality in the issuance of tax exempt  
obligations, the proceeds of which would be applied to the construc-  
tion of low income housing subsidized by the United States Department  
of Housing and Urban Development under the provisions of Section 8  
of the United States Housing Act of 1937, as amended.

August 8, 1979

OPINION NO. 66

Honorable David Doctorian  
State Senator, District 28  
Route 3  
Macon, Missouri 63552

Dear Senator Doctorian:

This is in response to your request for an opinion which  
reads as follows:

"Whether a public housing authority  
in Missouri or a municipality, which is  
empowered to act as a public housing au-  
thority under 24 C.F.R. Sec. 811, is em-  
powered to authorize or utilize a nonprof-  
it corporation as its agent or instrumen-  
tality to act on its behalf in the issua-  
nce of tax exempt obligations, the pro-  
ceeds of which would be applied to the  
construction of housing to be owned ei-  
ther by the public housing authority, a  
not-for-profit housing authority agent  
or private profit motivated owner for low  
income families under the Housing Autho-  
rities Law, R.S.MO. 99.010 et seq.

"Could the public housing authority  
or municipality act in the capacity of  
the 'parent entity' for the purpose of  
designating a Missouri not-for-profit  
corporation as a public agency within  
the meaning of Section 3(6) of the United  
States Housing Act of 1937, as amended,  
and HUD Reg. 24 C.F.R., Section 811, Sub-

Honorable David Doctorian

part A, in order to act as an instrumentality of the city's incorporated public housing authority for the purpose of providing mortgage financing for FHA insured multi-family housing projects for low income persons and wholly subsidized by HUD under the provisions of Section 8 of the USHA of 1937, as amended."

Your question requires a parenthetical summary of regulations promulgated by the United States Department of Housing and Urban Development (hereinafter HUD). 24 C.F.R. § 811 outlines requirements which, if met, allow bonds issued by a qualified entity for the purpose of financing low income housing projects to assume tax exempt status. One such qualified entity is a not-for-profit corporation which has been properly designated by a qualified public housing authority--deemed by the regulation a "parent entity"--as its agency or instrumentality in the issuance of obligations. Under the regulation cited, the "parent entity" must approve the articles of incorporation and bylaws of the not-for-profit corporation. The "parent entity" must also approve the project to be financed, project expenditures, and the issuance of the bonds by the not-for-profit corporation.

It is our understanding that the application to HUD for approval of the agency or instrumentality--as you suggest, a not-for-profit corporation--must identify the "parent entity," establish that the separate entity has been properly designated or created as the agency or instrumentality of the "parent entity," and that such creation or designation is not prohibited by state law.

Of course, the above summary of the cited HUD regulation is intended to act only as further clarification of your question. We will not, nor do we intend herein to interpret any federal laws or proposed federal laws which may be applicable to the question you have posed.

Sections 99.010 to 99.230, RSMo 1978, comprise the "Housing Authorities Law" of Missouri. In creating municipal corporations in each city (as defined in Section 99.020) and county to act as a housing authority for that city or county, the General Assembly stated that its purpose was the relief of a shortage of safe and sanitary dwellings for persons of low income, the clearance of slums, public safety, public health, and the prevention of crime. Section 99.030. See also Bader Realty & Investment Co. v. St. Louis Housing Authority, 217 S.W.2d 489, 493 (Mo.Banc 1949).

Under Section 99.080, each housing authority is granted broad powers to effectuate the purposes of the Housing Authorities Law.



Honorable David Doctorian

"1. An authority shall constitute a municipal corporation, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of sections 99.010 to 99.230, . . ." (emphasis added)

And, in Section 99.210, the legislature stated:

"In addition to the powers conferred upon an authority by other provisions of sections 99.010 to 99.230, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, . . . It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such authority." (emphasis added)

The legislative intent is clear; a local housing authority may exercise whatever powers are necessary to secure the financial assistance and cooperation of the federal government in obtaining money to finance construction of low income housing. By exempting the interest earned on certain bonds from federal income taxation and thereby making the bonds more attractive to investors, the federal government assists local housing authorities in obtaining mortgage money for the construction of low income housing. In order to obtain the federal assistance described, the requirements of Section 3(6) of the United States Housing Act of 1937 and 24 C.F.R. § 811 must be met. It is our opinion that the power of a housing authority to meet the requirements of a federal regulation which will assist that housing authority in obtaining construction mortgage money is implied in Sections 99.080 and 99.210.

Missouri courts have long recognized the validity of a statutory construction granting implied powers.

". . . when a power is given by statute, everything necessary to make it effectual

Honorable David Doctorian

or requisite to attain the end is necessarily implied. . . ." Ex parte Sanford, 139 S.W. 376, 383 (Mo.Banc 1911)

See also, Reilly v. Sugar Creek Tp. of Harrison County, 139 S.W.2d 525 (Mo. 1940), and State ex rel. Brokaw v. Board of Education of City of St. Louis, 171 S.W.2d 75 (St.L.Mo.App. 1943).

Further, the use of a not-for-profit corporation as the designated agency or instrumentality of a housing authority ("parent entity") is not an unlawful delegation of the powers of a municipal corporation. First, the powers of the housing authority are not bestowed by a municipality but are derived directly from the state. Therefore, a housing authority is neither an agent of a municipality nor a subordinate branch thereof. City of Paterson v. Housing Authority of Paterson, 96 N.J.Super. 394, 233 A.2d 98 (1967); Attorney General Opinion No. 205, Vanlandingham, 3-17-70. Once the governing body of a municipality passes a resolution pursuant to Section 99.040.1, which recognizes the need for a housing authority to function in that city, all actions taken by the housing authority thereafter are completed pursuant to the provisions of the Housing Authority Law. Attorney General Opinion No. 205, Vanlandingham, 3-17-70.

Second, assuming that a carte blanche delegation to a not-for-profit corporation by a local housing authority (created as a municipal corporation by the General Assembly) would violate Missouri law, see, Aquamsi Land Co. v. City of Cape Girardeau, 142 S.W.2d 332 (Mo. 1940), the requirements of 24 C.F.R. § 811.105 that the parent entity approve the articles of incorporation and bylaws of the designated entity, approve the project, the project program, and project expenditures, and approve each issue of obligations not more than sixty days prior to the issuance of the obligation by the designated entity are such that the local housing authority has the right of acceptance and/or veto over the designated entity's actions. No broad delegation of powers to a designated entity is permitted under the cited regulation. See, Arkansas-Missouri Power Corporation v. City of Kennett, 159 S.W.2d 782 (Mo. 1942). Therefore, in our opinion, the financing structure contemplated under the referenced regulation is not an unlawful delegation of authority by a housing authority under Missouri law.

Although no Missouri cases challenging the Housing Authorities Law have been found, the Missouri courts have upheld the validity of the Planned Industrial Expansion Law, State ex rel. Atkinson v. Planned Industrial Expansion Authority of St. Louis, 517 S.W.2d 36 (Mo.Banc 1975), and the Land Clearance for Redevelopment Law, State



Honorable David Doctorian

on inf. Dalton v. Land Clearance for Redevelopment Authority of Kansas City, Mo., 270 S.W.2d 44 (Mo.Banc 1954), and Land Clearance for Redevelopment Authority of City of St. Louis v. City of St. Louis, 270 S.W.2d 58 (Mo.Banc 1954). Despite strenuous constitutional attacks on the constitutionality of these laws, the court has adhered to a philosophy that ". . . The act is to be liberally construed to effectuate its purposes." State ex rel. Atkinson v. Planned Industrial Expansion Authority of St. Louis, supra at 41.

Annbar Associates v. West Side Redevelopment Corporation, 397 S.W.2d 635 (Mo.Banc 1965), has particular significance for this opinion. Chapter 353, RSMo 1978, provides for the creation of private urban redevelopment corporations, having a limited power of eminent domain and certain ad valorem tax benefits on property they improve. That legislation survived a constitutional challenge to its provisions granting eminent domain and tax relief to private persons. The court noted that the presence of controls exercised or exercisable by the city of Kansas City over the private corporation would ensure that the public purpose contemplated by Chapter 353 would be met.

We have previously described the complete control a parent entity would have over the designated agency or instrumentality by virtue of the requirements of the federal regulations. We are, therefore, confident that the appellate courts of Missouri would uphold the validity of the financing arrangement you describe.

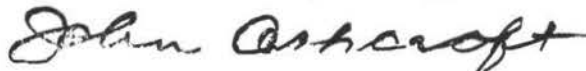
In light of the foregoing, we feel it unnecessary to express a separate opinion on each question you posed.

#### CONCLUSION

It is, therefore, the opinion of this office that a public housing authority may act in the capacity of a "parent entity," as that term is defined in 24 C.F.R. § 811.102, and is empowered to designate a not-for-profit corporation as its agency or instrumentality in the issuance of tax exempt obligations, the proceeds of which would be applied to the construction of low income housing subsidized by the United States Department of Housing and Urban Development under the provisions of Section 8 of the United States Housing Act of 1937, as amended.

The foregoing opinion, which I hereby approve, was prepared by my assistant Edward D. Robertson, Jr.

Yours very truly,



JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

65101

May 9, 1979

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

OPINION LETTER NO. 67

Mr. Stephen C. Bradford  
Commissioner  
Office of Administration  
P. O. Box 809  
Jefferson City, Missouri 65102

Dear Mr. Bradford:

This is in response to your opinion request asking the following question:

"Does the North Kansas City Memorial Hospital (NKCMH) have the legal authority under Section 96.150 et seq. R.S.Mo. to exclude sick pay from wages pursuant to Title 2, Section 209 (b) (42 USC 418) of the Social Security Act? If explicit legal authority does not exist under Section 96.150 et seq. R.S.Mo., is the NKCMH prohibited from excluding sick pay benefits under Section 209 (b)?"

You have informed this office that the Social Security Administration requires that public employers demonstrate legal authority for excluding sick pay from wages pursuant to Title 2, Section 209 (b) of the Social Security Act. In other words, the Social Security Administration requires that the public entity establish that statutory authority exists to make payments on account of sickness or accident disability as distinguished from a continuation of salary payments during the period of absence due to illness or disability.

The Office of Administration is responsible for social security reporting under the federal/state agreement effective January 1, 1951. This agreement extended social security coverage to employees of the

Mr. Stephen C. Bradford

state of Missouri and its political subdivisions under Section 218 of the Social Security Act. See Sections 105.300 through 105.440, RSMo.

The North Kansas City Memorial Hospital was created under and operates pursuant to Sections 96.150, et seq., RSMo. A board of trustees appointed pursuant to Sections 96.160 and 96.170 manages and governs the affairs of the hospital.

Section 96.180 reads as follows:

"The members of the board shall meet in the office of the city council, within ten days after their appointments have been confirmed, and organize by electing one of their members president, and one secretary and by the election of such other officers as they may deem necessary. They shall make and adopt such bylaws, rules and regulations for the management of such facility and the admission and discharge of patients as they shall deem expedient." (Emphasis added)

Section 96.190 provides as follows:

"The board shall control the expenditures of all moneys collected to the credit of the fund established for such facility and the construction, leasing, equipping, operating and maintaining of the facility and the grounds and other property real and personal belonging to the facility; provided, all moneys from taxes, donations and from any other source shall be deposited in the city treasury to the credit of that facility's fund, and drawn upon by the vouchers of the proper officers of such board. The board shall also employ such help, professional and otherwise, as may be necessary to carry out the spirit and intent of sections 96.150 to 96.220, and all such assistants and employees shall serve at the pleasure of the board."

The purpose of our inquiry is to ascertain the legislative intent in light of the plain language contained in these sections. The sections must be read in *pari materia* when considering their effect.

Mr. Stephen C. Bradford

It is our view in light of the provisions quoted above that the board of trustees has authority and complete responsibility for the management and operation of the hospital and for expenditures of all moneys collected to the credit of the fund established for the hospital. This responsibility includes the employment of help, professional and otherwise, as is necessary to carry out the duties of the board and such assistants and employees serve at the pleasure of the board and extends to fixing conditions of employment and fringe benefits.

Thus, it is our view that the North Kansas City Memorial Hospital through its board of trustees has legal authority to formulate a sick leave plan wherein payment is made on account of sickness. Such a personnel policy is within the authority of the hospital.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

COMPENSATION:  
CIRCUIT CLERKS:

The compensation provided for  
circuit clerks is set out in  
Section 483.083 of House Bill  
1634 of the 79th General Assembly  
and is effective beginning with the January 1, 1979, term of such  
incumbents.

June 7, 1979

OPINION NO. 68

Honorable Robert Ellis Young  
Representative, District 136  
Room 135, Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Young:

This opinion is in response to your question asking as follows:

"1. Can the three versions of section  
483.082, RSMo, be read together, and if not,  
which version is controlling?

"2. Is section 483.285, RSMo, currently  
in effect, and if so, can the two versions  
of it be read together, and if not, which  
version controls?

"3. Can the two versions of section 483.083,  
RSMo, be read together, and if not, which version  
is controlling? If the version enacted by House  
Bill No. 1634 of the 79th General Assembly con-  
trols, what is the legal effect of the conflict  
between it and the two versions of section  
483.285, RSMo?"

You also state:

"1. Three versions of section 483.082,  
RSMo, were passed by the 79th General Assembly.  
These versions were contained in the follow-  
ing bills:

- a. Senate Bill 775, 79th General Assembly
- b. House Bill 1121 and 1275, 79th General  
Assembly
- c. House Bill 1634, 79th General Assembly

Honorable Robert Ellis Young

"2. Section 483.285, RSMo, was repealed by House Bill 1634, but two other bills enacted two new versions of section 483.285. These bills were

a. Senate Bill 775, 79th General Assembly

b. Senate Bill 848, 79th General Assembly

"3. Section 483.083, RSMo, subsection 8, as enacted by House Bill 1634, 79th General Assembly, conflicts with the two versions of section 483.285, RSMo, referred to above. Section 483.083, RSMo, as enacted by House Bill 1121 and 1257 of the 79th General Assembly does not contain this conflicting provision."

Section 483.082, RSMo Supp. 1975, provided:

"1. Notwithstanding the provision of any other statute to the contrary, it shall be the duty of the clerks of the circuit courts, the circuit clerk-ex officio recorder of deeds or the clerk of court of common pleas of this state to keep, as the case may be, such records of the circuit courts and in such a manner as may be directed by rule of the supreme court so that they shall accurately record all essential matters relating to the causes and matters within the jurisdiction of the court which are and have been pending before the court, including pleadings, motions and related documents, transactions, orders and judgments or decrees related thereto showing the course and disposition of causes and matters, the taxing and collection of court costs, and the setting of trial calendars or dockets of pending cases.

"2. Recognizing that improved methods and systems of keeping records and data have been and will continue to be developed from time to time and that the clerks of the circuit courts of this state should be empowered to utilize improved methods, systems and techniques of keeping records of essential matters, and notwithstanding the provisions of any other statute to the contrary, the methods, form and systems of keeping all such files and records shall be as directed and approved by rule of the supreme court.

"3. The circuit clerk in any county comprised wholly of a city with a population of over six hundred thousand, and the circuit clerk, the circuit clerk-ex officio recorder of deeds, or the clerk of court of common pleas, as the case may be, in all counties except counties of the first class having a charter form of government and not containing a city of over four hundred thousand population and counties of the first class shall receive additional compensation for the services performed by him under sections 109.140 and 483.082 the additional compensation which shall be computed on a combination population-assessed valuation basis as set forth in the following schedule:

Population	Salary	Assessed Valuation	Salary
2,000 to 3,000	\$775.00	0 to 10 million	\$450.00
*	*	*	

"4. The population factor shall be as disclosed by the last preceding federal decennial census and the assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation. Payment of the compensation provided for herein shall be payable in equal monthly installments by the county."

House Bills Nos. 1121 and 1257 among other things repealed Section 483.082, RSMo Supp. 1975, and enacted a new section with the same number which provides:

"1. Notwithstanding the provisions of any other statute to the contrary, it shall be the duty of the clerks of all courts to keep such records of the courts and in such a manner as may be directed by rule of the supreme court so that they shall accurately record all essential matters relating to the causes and matters within the jurisdiction of the court which are and have been pending before the court, including pleadings, motions and related documents, transactions, orders and judgments or decrees related thereto showing the course and disposition of causes and matters, the taxing and collection of court costs, and the setting of trial calendars or dockets of pending cases.



Honorable Robert Ellis Young

"2. Recognizing that improved methods and systems of keeping records and data have been and will continue to be developed from time to time and that all court clerks should be empowered to utilize improved methods, systems and techniques of keeping records of essential matters, and notwithstanding the provisions of any other statute to the contrary, the methods, form and systems of keeping all such files and records shall be as directed and approved by rule of the supreme court."

House Bills Nos. 1121 and 1257 also enacted a new section numbered as Section 483.083, providing as follows:

"1. Circuit clerks shall be entitled to the aggregate of the compensation set forth in this section.

"2. In addition to compensation otherwise provided, the circuit clerk of the city of St. Louis and the circuit clerk or the circuit clerk-ex officio recorder of deeds in all counties except counties of the first class shall receive compensation which shall be computed on a combination population-assessed valuation basis as set forth in the following schedule:

Population	Salary	Assessed Valuation	Salary
2,000 to 3,000	\$3875.00	Less than 10 million	\$6750.00
*	*	*	

The population factor shall be as disclosed by the last preceding federal decennial census and the assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation.

"3. In addition to the compensation otherwise provided, the circuit clerk of the city of St. Louis shall receive the sum of fifteen hundred dollars per year.

Honorable Robert Ellis Young

"4. In addition to compensation otherwise provided, the circuit clerk in any county of the second class [where] court is held in two cities shall receive the sum of three thousand dollars per year.

"5. In addition to the compensation otherwise provided, the circuit clerk serving district no. 1 of the circuit court of Marion county and the clerk serving district no. 2 of the circuit court of Marion county shall each receive the sum of fifteen hundred dollars per year. In the event the judge orders child support payments in Marion county to be made through the clerk, the clerk shall annually on or before February first of each year charge ten dollars per year to each such person so obligated to make child support payments, which fees shall be paid to the county general revenue fund for so long as such clerk is paid by the county and shall be paid to the state if such clerk is paid by the state.

"6. In addition to compensation otherwise provided, the clerk of district number 2 of the circuit court of Marion County shall receive the sum of two thousand dollars per year.

"7. In addition to the compensation otherwise provided, the clerk of district number 2 of the circuit court of Marion County and the circuit clerk of Cape Girardeau County shall receive the sum of three hundred dollars per year.

"8. Compensation payable to circuit clerks in first class counties shall be payable as otherwise provided by law.

"9. Payment of the compensation provided in this section shall be payable in equal monthly installments, except that the salary of the circuit clerk of the city of St. Louis shall be paid in semimonthly installments.

Honorable Robert Ellis Young

"10. The compensation provided in this section shall be in lieu of all fees, and all fees collected shall be paid over to the state or to the counties and the city of St. Louis as otherwise provided by law.

"11. The repeal of sections 50.336, 483.250, 483.351, 483.455, and 483.470 shall be effective December 3, [sic] 1978. The repeal and reenactment of section 483.082 shall be effective December 31, 1978. Section 483.083 shall become effective December 31, 1978."

House Bill No. 1634 repealed Section 483.082, RSMo Supp. 1975, and enacted a new section with the same number providing as follows:

"1. Notwithstanding the provisions of any other statute to the contrary, it shall be the duty of the clerks of all courts to keep such records of the courts and in such a manner as may be directed by rule of the supreme court so that they shall accurately record all essential matters relating to the causes and matters within the jurisdiction of the court which are and have been pending before the court, including pleadings, motions and related documents, transactions, orders and judgments or decrees related thereto showing the course and disposition of causes and matters, the taxing and collection of court costs, and the setting of trial calendars or dockets of pending cases.

"2. Recognizing that improved methods and systems of keeping records and data have been and will continue to be developed from time to time and that all court clerks should be empowered to utilize improved methods, systems and techniques of keeping records of essential matters, and notwithstanding the provisions of any other statute to the contrary, the methods, form and systems of keeping all such files and records shall be as directed and approved by rule of the supreme court."

Honorable Robert Ellis Young

House Bill No. 1634 also enacted a new section, Section 483.083, which provides:

"1. Circuit clerks shall be entitled to the aggregate of the compensation set forth in this section.

"2. In addition to compensation otherwise provided, the circuit clerk of the city of St. Louis and the circuit clerk or the circuit clerk-ex officio recorder of deeds in all counties except counties of the first class shall receive compensation which shall be computed on a combination population-assessed valuation basis as set forth in the following schedule:

<u>Population</u>	<u>Salary</u>	<u>Assessed Valuation</u>	<u>Salary</u>
2,000 to 3,000	\$3875.00	Less than \$ 10 million	\$6750.00
*	*	*	

The population factor shall be as disclosed by the last preceding federal decennial census and the assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation.

"3. In addition to the compensation otherwise provided, the circuit clerk of the city of St. Louis shall receive the sum of fifteen hundred dollars per year.

"4. In addition to compensation otherwise provided, the circuit clerk in any county of the second class [where] court is held in two cities shall receive the sum of three thousand dollars per year.

"5. In addition to the compensation otherwise provided, the circuit clerk serving district no. 1 of the circuit court of Marion county and the clerk serving district no. 2 of the circuit court of Marion county shall each receive the sum of fifteen hundred dollars per year. In the event the judge orders child support payments in Marion county to be made through the clerk, the clerk shall annually on or before February

first of each year charge ten dollars per year to each such person so obligated to make child support payments, which fee shall be paid to the county general revenue fund for so long as such clerk is paid by the county and shall be paid to the state if such clerk is paid by the state.

"6. In addition to compensation otherwise provided, the clerk of district number 2 of the circuit court of Marion county shall receive the sum of two thousand dollars per year.

"7. In addition to the compensation otherwise provided, the clerk of district number 2 of the circuit court of Marion county and the circuit clerk of Cape Girardeau county shall receive the sum of three hundred dollars per year.

"8. (1) In counties of the first class not having a charter form of government for which compensation for the circuit clerk is not otherwise provided in this section, each circuit clerk shall receive the sum of twenty-two thousand dollars per year.

(2) Notwithstanding the foregoing provisions of this section the circuit clerk in counties of the first class not having a charter form of government and not [now] having more than one hundred fifty thousand and less than two hundred thousand inhabitants shall receive an annual salary of twenty-two thousand dollars as his total compensation for all services performed by him. Twelve thousand dollars shall be paid by the state in lieu of the salary formerly paid to the chief magistrate clerk whose former duties shall be performed by such circuit clerk notwithstanding the other provisions of chapter 483, RSMo, and until June 30, 1980, ten thousand dollars shall be paid by such county and thereafter such ten thousand dollars shall also be paid by the state.

Honorable Robert Ellis Young

"9. Payment of the compensation provided in this section shall be payable in equal monthly installments, except that the salary of the circuit clerk of the city of St. Louis shall be paid in semimonthly installments. The compensation of all circuit clerks shall be paid by the counties and the city of St. Louis until June 30, 1980. From and after July 1, 1980, the compensation of all circuit clerks shall be paid by the state and they shall be considered state employees for all purposes except the manner of their selection, appointment or removal from office; provided, however, that the circuit clerk of St. Louis county and the court administrator of Jackson county shall continue to be paid by those counties and shall not become state employees, but St. Louis county and Jackson county shall each be paid an amount which is equivalent to a circuit clerk's salary as provided in subsection 3 of section 483.015.

"10. The compensation provided in this section shall be in lieu of all fees, and all fees collected shall be paid over to the state or to the counties and the city of St. Louis as otherwise provided by law."

Senate Bill No. 775 of the Second Regular Session, 79th General Assembly, also repealed Section 483.082, RSMo Supp. 1975, and enacted a new section with the same number providing as follows:

"1. Notwithstanding the provision of any other statute to the contrary, it shall be the duty of the clerks of the circuit courts, the circuit clerk-ex officio recorder of deeds or the clerk of court of common pleas of this state to keep, as the case may be, such records of the circuit courts and in such a manner as may be directed by rule of the supreme court so that they shall accurately record all essential matters relating to the causes and matters within the jurisdiction of the court which are and have been pending before the court, including pleadings, motions and related documents, transactions, orders and judgments or decrees related thereto showing the course and disposition of causes and matters, the taxing and collection of court costs, and the setting of trial calendars or dockets of pending cases.

"2. Recognizing that improved methods and systems of keeping records and data have been and will continue to be developed from time to time and that the clerks of the circuit courts of this state should be empowered to utilize improved methods, systems and techniques of keeping records of essential matters, and notwithstanding the provisions of any other statute to the contrary, the methods, form and systems of keeping all such files and records shall be as directed and approved by rule of the supreme court.

"3. Except in counties of the first class not having a charter form of government and counties of the first class having a charter form of government and not containing a city with a population of over four hundred thousand inhabitants, the circuit clerk in any county comprised wholly of a city with a population of over six hundred thousand, and the circuit clerk, the circuit clerk-ex officio recorder of deeds, or the clerk of court of common pleas, as the case may be, in all other counties shall receive additional compensation for the services performed by him under sections 109.140, RSMo, and 483.082 the additional compensation which shall be computed on a combination population-assessed valuation basis as set forth in the following schedule:

<u>Population</u>	<u>Salary</u>	<u>Assessed Valuation</u>	<u>Salary</u>
2,000 to 3,000	\$775.00	0 to 10 million	\$450.00
*	*	*	

"4. The population factor shall be as disclosed by the last preceding federal decennial census and the assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation. Payment of the compensation provided for herein shall be payable in equal monthly installments by the county."



Honorable Robert Ellis Young

Section 483.285, RSMo Supp. 1975, provided as follows:

"Notwithstanding the provisions of section 50.334, RSMo, each circuit clerk in counties of the first class not having a charter form of government shall receive as compensation for services performed by him an annual salary in an amount of sixteen thousand five hundred dollars."

Section 483.285, RSMo Supp. 1975, was repealed and reenacted by Senate Bill No. 775, the same bill which repealed and amended Section 483.082. This version of Section 483.285 provides:

"Notwithstanding the provisions of section 50.334, RSMo, each circuit clerk in counties of the first class not having a charter form of government shall receive as compensation for services performed by him an annual salary in an amount of twenty-two thousand dollars."

Senate Bill No. 848 of the Second Regular Session, 79th General Assembly, also repealed Section 483.285, RSMo Supp. 1975, and enacted a new section with the same number providing as follows:

"Notwithstanding the provisions of section 50.334, RSMo, each circuit clerk in counties of the first class not having a charter form of government shall receive an annual salary of sixteen thousand five hundred dollars, except that in each county of this state now [compare the apparently erroneous use of the word "not" in Section 483.083.8(2), HB 1634] or hereafter having more than one hundred fifty thousand and less than two hundred thousand inhabitants the circuit clerk shall receive an annual salary of twenty-two thousand dollars as his total compensation for all services performed by him. Twelve thousand dollars of such salary shall be paid by the state in lieu of the salary formerly paid to the chief magistrate clerk whose former duties shall be performed by such circuit clerk, and ten thousand dollars shall be paid by such county."

Honorable Robert Ellis Young

Under Section B of House Bill No. 1634 such act is effective on January 2, 1979, except as expressly provided. Subsection 2 of Section B expressly provides that the provisions of subdivision (2) of subsection 8 of Section 483.083 become effective December 31, 1978. Subsection 11 of Section B of House Bill No. 1634 expressly provides that the provisions of subdivision (1) of subsection 8 of Section 483.083 become effective December 31, 1978.

Sections 483.082 and 483.083 as enacted by House Bills Nos. 1121 and 1257 expressly became effective December 31, 1978.

Section 483.285 as enacted by Senate Bill No. 848 expressly became effective December 31, 1978.

Section 483.285, as amended by Senate Bill No. 775, literally effective August 13, 1978, increased the compensation of the circuit clerk in counties of the first class not having a charter form of government to twenty-two thousand dollars. However, such increase in compensation could not take effect until the beginning of the next term of such clerks, January 1, 1979, because the provisions of Section 13 of Article VII of the Missouri Constitution prohibit an increase in such officer's compensation during such officer's term.

Section 483.285, as amended by Senate Bill No. 848, was similar to repealed Section 483.285 insofar as it provided for an annual salary of sixteen thousand five hundred dollars for circuit clerks in counties of the first class not having a charter form of government but added new matter following such provision which provided that except that in each county of this state now or hereafter having more than one hundred fifty thousand and less than two hundred thousand inhabitants the circuit clerk shall receive an annual salary of twenty-two thousand dollars and also added the provision that twelve thousand dollars of such salary shall be paid by the state in lieu of the salary formerly paid to the chief magistrate clerk whose former duties shall be performed by such circuit clerk and ten thousand dollars shall be paid by such county.

The provisions of Senate Bill No. 848 are similar to those contained in the provisions of subsection 8 of Section 483.083, as amended by House Bill No. 1634, which repealed Section 483.285, RSMo Supp. 1975, except that the salary provided for in House Bill No. 1634 for the circuit clerk in counties of the first class not having a charter form of government and "not" [sic] having more than one hundred fifty thousand and less than two hundred

Honorable Robert Ellis Young

thousand inhabitants is twenty-two thousand dollars instead of sixteen thousand five hundred dollars. In addition such provisions of subdivision 2 added the language providing that ten thousand dollars of the compensation would be paid by the county until June 30, 1980, and thereafter, such sum shall also be paid by the state in addition to the twelve thousand dollars paid by the state.

House Bills Nos. 1121 and 1257 did not contain provisions similar to Senate Bill No. 848 or subsection 8 of Section 483.083 of House Bill No. 1634. Subsection 8 of Section 483.083, of House Bills Nos. 1121 and 1257 however, provided that compensation payable to circuit clerks in first class counties shall be payable as otherwise provided by law. House Bills Nos. 1121 and 1257 did not repeal or purport to reenact Section 483.285.

Subsection 8 of Section B of the schedule of House Bill No. 1634 also provides:

"In the event of the passage of an act at the Second Regular Session of the 79th General Assembly which provides for an increase or decrease in the amount of compensation to be paid to an official whose salary is specified in sections contained within this act, the amount of such increased or decreased compensation provided in any such separate enactment shall be effective from and after January 2, 1979, notwithstanding the provisions of this act."

Insofar as clerks in first class counties not having a charter form of government are concerned, it is our view that the provisions of Senate Bill No. 775, increasing the compensation to twenty-two thousand dollars, will control over the provisions of Senate Bill No. 848 relating to compensation of sixteen thousand five hundred dollars because the higher figure was an increase provided for in Senate Bill No. 775 whereas the lower figure in Senate Bill No. 848 was merely a reiteration of the compensation provided for in the repealed section. This theory of interpretation is consistent with the construction we adopted in our Opinion No. 194-1978, which for the sake of brevity we have not enclosed because such opinion is not otherwise relevant here.

It follows, in our view, that the provisions of House Bill No. 1634 which restate the changes found in both Senate Bill No. 775 and Senate Bill No. 848 with respect to such clerks in counties of the

Honorable Robert Ellis Young

first class not having a charter form of government, Section 483.082.8(1)(2), can be accepted as a proper restatement of such changes. Since House Bill No. 1634 does not of itself increase the salary figures but merely restates the salary figures provided in Senate Bill No. 775, the provisions of subsection 8 of Section B of the schedule of House Bill No. 1634, supra, are not violated by such a construction.

As you have noted, Section 483.082, RSMo Supp. 1975, was amended by three different bills enacted in the Second Regular Session, 79th General Assembly. The amendment made by Senate Bill No. 775, which was literally effective August 13, 1978, merely related to the matter contained in old paragraph three of Section 483.082, RSMo Supp. 1975, relative to certain first class counties. However, the old partial pay schedule was continued.

It should also be noted that Section 50.334, RSMo Supp. 1975, which provided for compensation for recorders of deeds, circuit clerks, circuit clerks-ex officio recorder of deeds and the clerks of the court of common pleas in counties having a population of less than five hundred thousand and an assessed valuation as prescribed in that section was repealed and reenacted by both House Bills Nos. 1121 and 1257 and House Bill No. 1634. Such section was not affected by the enactments of Senate Bill No. 775 or Senate Bill No. 848. In both House Bills Nos. 1121 and 1257 and House Bill No. 1634 Section 50.334 was reenacted to pertain only to the recorder of deeds having an office separate from that of the circuit clerk in all counties except counties of the first class having a population of less than five hundred thousand and an assessed valuation as prescribed. The first paragraphs of the amendments of both House Bills Nos. 1121 and 1257 and House Bill No. 1634 to that section are identical, although the compensation computed on a combination of population-assessed valuation differs. Section 50.334, as enacted by House Bills Nos. 1121 and 1257, was literally effective December 31, 1978, and Section 50.334 of House Bill No. 1634 was literally effective January 2, 1979. It is obvious that the effect of the repeal of Section 50.334 by House Bills Nos. 1121 and 1257 and House Bill No. 1634 was to remove the circuit clerk from the compensation provisions of that section. While it therefore is not pertinent to your inquiry with respect to the compensation for circuit clerks to discuss Section 50.334 as amended further, we note that these amendments make it clear that the circuit clerks no longer come within the provisions of Section 50.334. We do not determine the effect of either reenactment with respect to the compensation of the recorder of deeds who come within the provisions of such sections.

Honorable Robert Ellis Young

House Bills Nos. 1121 and 1257 also repealed Section 483.082, RSMo Supp. 1975, and split that section into two amended sections, one bearing the old number 483.082 and another bearing a new number 483.083. As we have noted, the amendments to those sections were literally effective December 31, 1978.

House Bill No. 1634 also repealed Section 483.082, RSMo Supp. 1975, and also split that section, with amendments, into two sections bearing the numbers 483.082 and 483.083. Section 483.082 as enacted by House Bills Nos. 1121 and 1257 is identical to Section 483.082 as enacted by House Bill No. 1634.

Section 483.083 of House Bills Nos. 1121 and 1257 contained the same matter as contained in said section in House Bill No. 1634 through subsection 7 of Section 483.083, of House Bills Nos. 1121 and 1257 and subsection 7 of Section 483.083, of House Bill 1634. Likewise both sections of such bills contain an identical subsection 10 with respect to the payments of fees to the state or the county and are identical with respect to that part of subsection 9 of both bills providing for the payment of compensation in equal monthly installments and that the salary of the circuit clerk of the City of St. Louis shall be paid in semi-monthly installments. The differences in the two bills stem largely from the coverage by House Bill No. 1634 of the subject matter previously covered in repealed Section 483.285 relating to such clerk's compensation in counties of the first class not having a charter form of government and with respect to additional matter added in subsection 9 relating to the provisions respecting payment by the state or the county as the case may be.

There is no obvious conflict between Sections 483.083 as enacted by House Bills Nos. 1121 and 1257 and House Bill No. 1634. Both bills clearly set out a new pay schedule applicable to such clerks. Clearly, also, the pay schedule set out in Section 483.082 of Senate Bill No. 775 for circuit clerks was a continuation of the schedule contained in the repealed law and cannot be harmonized with the amendments, we have noted, of House Bills Nos. 1121 and 1257 and House Bill No. 1634.

Under the circumstances the amendments made to Section 483.082 by Senate Bill No. 775 should be disregarded and the provisions of Sections 483.082 and 483.083 as contained in House Bills Nos. 1121 and 1257 and House Bill No. 1634 should be given effect.

Honorable Robert Ellis Young

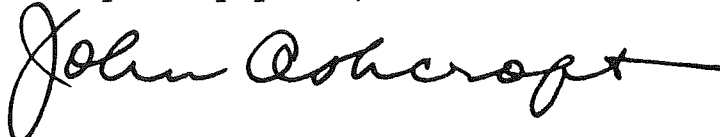
The circuit clerks were elected at the general election in 1978 and took office on the first Monday in January (January 1, 1979) following their election under Section 483.015, RSMo Supp. 1975, repealed as of January 2, 1979. The compensation provided for such clerks in House Bill No. 1634 was derived in part from Section 483.285, as amended by Senate Bill No. 775 and from House Bills Nos. 1121 and 1257. Therefore, because such provisions were not dependent solely on the provisions of House Bill No. 1634, they took effect at the beginning of such officers' terms.

#### CONCLUSION

It is therefore the opinion of this office that the compensation provided for circuit clerks is set out in Section 483.083 of House Bill No. 1634 of the 79th General Assembly and is effective beginning with the January 1, 1979, term of such incumbents.

The foregoing opinion which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in black ink, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

DEPARTMENT OF MENTAL HEALTH:  
HANDICAPPED CHILDREN:

The Department of Mental Health  
does not have the authority to  
place patients out of the State.

OPINION NO. 70

August 27, 1979

Beverley Wilson, M.D.  
Acting Director  
Department of Mental Health  
2002 Missouri Boulevard  
Jefferson City, Missouri 65101



Dear Dr. Wilson:

This official opinion is issued in response to your  
request for rulings on the following questions:

- "1. Does the Department of Mental Health  
have the authority to place patients out  
of the state?
- "2. Is the Department of Mental Health  
responsible for the costs of placing and  
maintaining a handicapped or severely  
handicapped child in another state if  
the placement is necessary for the  
child to receive an appropriate education?
- "3. May a school district, special school  
district, or the department of elementary  
and secondary education be required to pay  
towards the cost of the maintenance and  
placement where necessary and appropriate  
out of the state?"

As to your first question, we find that heads of state  
mental health and mental retardation facilities may place  
patients in family homes or licensed facilities if they  
believe the placements to be appropriate and in the best  
interest of the patients. Section 202.185 provides as follows  
in pertinent part:

- "1. The head of a mental health facility  
operated by the department of mental health  
may place any patient, whether voluntary  
or involuntary, in a licensed boardinghouse,



licensed nursing home or family home, upon such terms and conditions as he deems appropriate when he believes that such placement would be appropriate and in the best interest of the patient. . . ."

Likewise, under §202.193, RSMo, 1978, the heads of mental retardation facilities may place mentally retarded patients in licensed nursing homes, licensed or certified mental retardation facilities, or family homes if they consider the placements to be in the best interest of the patients and meet certain other statutory requisites.

Neither sections 202.185 nor 202.195, give the heads of state mental health and retardation facilities specific authority to place patients out of the state. The only provisions in Chapter 202 which pertain to services being offered in other states is the interstate compact on mental health.

Under the interstate compact on mental health, §202.880, Art. III(b), RSMo 1978, patients in Missouri may be transferred to institutions in other party states based upon clinical determinations that the care and treatment of the patients would be improved by the transfers because of such factors as the location of the patients' families and the character of the patients' illnesses. Before such transfers can be made, the receiving states have to agree to accept the patient under Art. III(c). Furthermore, a person may be a patient of only one institution at a time under the compact; therefore, the patient becomes a patient of the institution in the receiving state. Section 202.880 Art. VII(a). Thus, the Department of Mental Health would not continue to have an obligation to provide care and treatment after the patient is transferred under the compact.

Other than the transfer of a patient under the interstate compact, we do not find any authority for a placement or a transfer of a Department of Mental Health patient to or in another state.

As to your second question, it follows that if the Department does not have the authority to place patients out of the State, that the Department is not responsible for the costs of placing and maintaining a handicapped or severely handicapped child in another state if the placement is necessary for the child to receive an appropriate education.

Because the third question assumes that the Department has the authority or the responsibility to place a handicapped or severely handicapped child in another state if

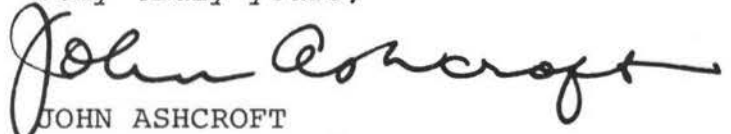
necessary for the child to receive an appropriate education, we are not responding to it because the Department does not have the legal authority or responsibility to make such placements.

CONCLUSION

It is the opinion of this office that the Department of Mental Health does not have the authority to place patients out of the State.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Reginald H. Turnbull.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a stylized, flowing script.

JOHN ASHCROFT  
Attorney General

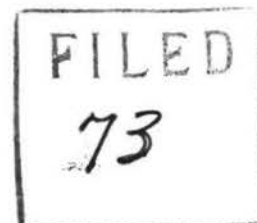
SCHOOLS:  
SUNSHINE LAW:

A meeting of a board of education and its superintendent held to receive an oral report from him concerning ongoing business is subject to the sunshine law.

OPINION NO. 73

April 5, 1979

Honorable John Wm. Buechner  
Representative, District 94  
Room 134, State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Buechner:

This opinion is issued in response to the question which you state as follows:

"Is a meeting between a school district board of education, and its chief executive officer, the superintendent of schools, in order to receive an oral report from him concerning ongoing business subject to the sunshine law or can it be heard in executive session?"

You further elaborated on this question with the following information:

"It is anticipated that individual board members would be able to ask the superintendent questions concerning district operations and his proposals and recommendations in order to be more properly prepared for the monthly public board meetings.

"At such a proposed meeting, the board would not enter into a dialogue between board members, no decision would be made, no business would be discussed between board members, and no votes would be taken, either formally or informally."

There is no dispute that a school board is a public governmental body and is subject to the sunshine law, Sections 610.010 to 610.030, RSMo Supp. 1975.

Honorable John Wm. Buechner

Section 610.010 (3) defines a "public meeting" as:

" . . . any meeting, formal or informal, regular or special, of any public governmental body, at which any public business is discussed, decided or public policy formulated;"

Section 610.015 provides that ". . . all public meetings shall be open to the public . . ."

Based on the language of these statutory provisions, we must conclude that the meeting you have described should not be closed to the public. In Opinion No. 330 (1973), we ruled that the sunshine law was applicable to informal meetings regardless of whether or not formal or official action is taken. It has consistently been held that remedial legislation such as the sunshine law is to be liberally construed. In Cohen v. Poelker, 520 S.W.2d 50 (Mo. Banc 1975), the Missouri Supreme Court stated, id. at 52:

"The several sections of Chapter 610, considered together, speak loudly and clearly for the General Assembly that its intent in enacting the Sunshine Law, so-called was that all meetings of members of public governmental bodies (except those described in § 610.025) at which the peoples' business in considered must be open to the people and not conducted in secrecy, and also that the records of the body and the votes of its members must be open."

To be a public meeting, a meeting may be informal, and all that need happen is that public business be discussed or public policy formulated. You have described a situation where no "discussion" would take place between board members, and where the only activity would be that of board members asking questions of the superintendent. We believe that to give the statute such a narrow reading as would exclude meetings wherein public business was addressed by way of questions and answers would defeat the intent of the law. This is particularly true where, as here, the board members may form their opinions and eventually translate these opinions into formal action based on the information presented to them by the superintendent. We perceive no justification under the statute for excluding this aspect of the collective decision making process from public scrutiny.

Honorable John Wm. Buechner

CONCLUSION

It is the opinion of this office that a meeting of a board of education and its superintendent held to receive an oral report from him concerning ongoing business is subject to the sunshine law.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Sheila K. Hyatt.

Yours very truly,

A handwritten signature in cursive script, reading "John Ashcroft", followed by a horizontal line.

JOHN ASHCROFT  
Attorney General

February 22, 1979

OPINION LETTER NO. 74



Honorable David C. Christian  
State Representative  
Room 235B, Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Christian:

This letter is in response to your question asking:

"1. May a chief division clerk or other division clerks appointed under section 483.243 R.S.Mo. 1978 by an associate circuit judge seek election as a member of a political party central committee after January 2, 1979?

"2. May a chief division clerk or other division clerks appointed under section 483.243 R.S.Mo. 1978 by an associate circuit judge who are members of a political party central committee on January 1, 1979 continue to hold such positions for the expiration of the term to which they were elected?

"3. May division clerks appointed under section 483.245 R.S.Mo. 1978 by an associate circuit judge seek election or continue to serve as a member of a political party central committee after July 1, 1981?"

Honorable David C. Christian

You also state:

"Clay County is a first class county constituting judicial circuit number 7 which has adopted the non-partisan court plan. Certain employees in the office of a Magistrate Judge in Clay County were elected as members of a political party committee in August, 1978. On January 2, 1979, the Magistrate judges elected on a partisan ticket in November became Associate Circuit Judges to which the non-partisan court plan applies by virtue of Article V of the Missouri Constitution. The employees were continued as division clerks under the provisions of 483.243 R.S.Mo. 1978 after January 2, 1979, and desire to continue serving on political party central committees."

The sections to which you refer are Sections 483.243 and 483.245 of House Bill No. 1634 of the 79th General Assembly.

We find no prohibition respecting the activities of the clerks to which you refer. Section 483.245 is by its terms effective July 1, 1981, therefore we will not speculate as to whether or not such prohibitions will exist when that section becomes effective.

Obviously, such associate circuit judges could not "directly or indirectly make any contribution to or hold any office in a political party or organization, or take part in any political campaign." Section 25(f), Article V, Missouri Constitution. Whether such judges violate this prohibition, or any other, is of course a matter for determination by the Commission on Retirement, Removal and Discipline of Judges, created pursuant to Section 24, Article V, Missouri Constitution.

Very truly yours,

JOHN ASHCROFT  
Attorney General



August 1, 1979

(Answered by Letter-Burns)

The Honorable Wesley A. Miller  
Representative, 121st District  
801 East First Street  
Washington, Missouri 63090



Dear Mr. Miller:

This letter is in response to your question asking whether a special road district is required in all instances to service and maintain roads platted for public use by private developers in subdivisions that lie within their district and whether or not they are obligated to expend taxpayers' funds for the maintenance, repair and servicing of those roads or street systems.

You have also given us a set of facts which involve a housing subdivision and a special road district in Franklin County.

We have thoroughly reviewed the information which you furnished to us, as well as information furnished to us by the attorneys for the housing subdivision. We have concluded that there are several statutes, including provisions in Chapter 445 and Chapter 228, RSMo, which are possibly applicable to the situation you present. However, it is also our view that the situation you present is in a litigation posture and that there are numerous fact questions which must be resolved to determine the precise question you ask. The determination of the law applicable to the actual facts as determined by the court must be made by the judicial branch of the government and not by this office through the official opinion process. In this respect, we call to your attention the holding of the Missouri Supreme Court in Gershwin Investment Corporation v. Danforth, 517 S.W.2d 33 (Mo. Banc 1974), in which the court held that the attorney general was not authorized to exercise judicial functions.

Page Two  
The Honorable Wesley A. Miller

We therefore conclude that we must respectfully decline to issue an opinion of this office on the situation which you present.

Very truly yours,

JOHN ASHCROFT  
Attorney General

C. B. BURNS, JR.  
Assistant Attorney General

CBB/fh

To Mr 5-3-79

SCHOOLS:  
CONSTITUTIONAL LAW:

Public junior colleges in Missouri may belong to the Missouri Association of Community Junior Colleges and expend junior college district funds to support that organization through membership dues and other fees. It is further our opinion that school districts in Missouri may belong to the Missouri State High School Activities Association and expend district funds to support that association through membership dues and other fees.

May 7, 1979

OPINION NO. 76

Honorable Lloyd J. Baker  
Representative, 35th District  
State Capitol Post Office  
Jefferson City, Missouri 65101

Dear Representative Baker:

This opinion is in response to your request for an opinion which reads as follows:

"1. Is there statutory authority for public junior colleges in the state of Missouri to belong to the Missouri Association of Community Junior Colleges? Can junior college funds be used to support this organization through membership dues and other fees?

"2. Is there statutory authority for school districts in the state of Missouri to belong to the Missouri Athletic Association? Can district funds be used to support this association through membership dues and other fees?"

Although no Missouri appellate cases which directly address your first question can be found, other states have addressed similar questions.

In Schuerman v. State Board of Education, 284 Ky. 556, 145 S.W.2d 42, 43 (1940), a Kentucky Court of Appeals held that a school district could pay dues to the Kentucky School Boards Association, which had the purpose, inter alia, to ". . . Work for educational legislation that will promote the best educational interests of

Honorable Lloyd J. Baker

the children of Kentucky." This case is particularly instructive for purposes of this opinion because Kentucky has a constitutional provision similar to Article IX, Section 5 of the Missouri Constitution which provides:

" . . . [I]ncome of which [the public school fund] shall be faithfully appropriated for establishing and maintaining free public schools, and for no other uses or purposes whatsoever." Art. IX, Sec. 5, Mo.Const.

The authority for cooperation in Missouri is even stronger. Section 70.210, RSMo 1969, defines "political subdivision" to include school districts. Section 178.770.2, RSMo 1969, provides:

"When a [junior college] district is organized, it shall be . . . a subdivision of the state of Missouri . . . and possess the same corporate powers as common and six-director school districts in this state, . . . except as herein otherwise provided." (emphasis added)

Thus, Section 70.220, RSMo 1969, applies to school and junior college districts.

"Any municipality or political subdivision of this state, . . . may contract and cooperate with any other municipality or political subdivision, . . . for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. . . ." (emphasis added).

Although your request does not indicate the purposes of the Missouri Association of Community Junior Colleges (MACJC), our research has determined that the MACJC intends to ". . . enhance the educational programs of junior and community colleges, . . ." MACJC Constitution, Art. III, Section 1.

The formation of a voluntary association for the enhancement of the educational programs of junior colleges within the State of Missouri is an appropriate method of cooperation between junior

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colleges and junior college districts. The MACJC provides a common service for its members within the scope of the powers of junior college districts. Therefore, it is our opinion, that junior colleges and junior college districts in the State of Missouri may belong to the Missouri Association of Community Junior Colleges and may contribute funds to support the association through membership dues and other fees.

You indicated orally that your second question should be clarified to read:

"Is there statutory authority for school districts in the state of Missouri to belong to the Missouri State High School Activities Association? Can district funds be used to support this association through membership dues and other fees?"

The Missouri State High School Activities Association (MSHSAA) states its purpose as follows:

"The Missouri State High School Activities Association is a voluntary, nonprofit, educational association of junior and senior high schools established for the purpose of working cooperatively in adopting standards for supervising and regulating those interscholastic activities and contests that may be delegated by the member schools to the jurisdiction of the Association." Constitution of the Missouri State High School Activities Association, Article II, Section 2.

In view of this purpose, and the foregoing discussion of applicable law, it is our opinion that voluntary membership in the MSHSAA is an appropriate means of cooperation between school districts in Missouri, that membership therein is within the scope of the powers of school districts, and that school districts may expend district funds to support this association through membership dues and other fees.

We enclose Opinion No. 186, rendered July 1, 1969, to Senator John J. Johnson and Opinion No. 167, rendered July 10, 1969, to Representative Robert H. Branom, which are in accord with the holding in this opinion.

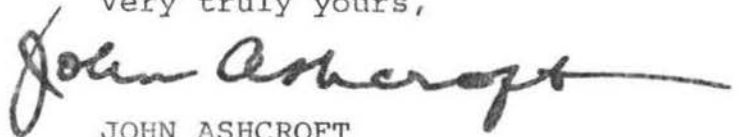
Honorable Lloyd J. Baker

CONCLUSION

It is, therefore, our opinion that public junior colleges in Missouri may belong to the Missouri Association of Community Junior Colleges and expend junior college district funds to support that organization through membership dues and other fees. It is further our opinion that school districts in Missouri may belong to the Missouri State High School Activities Association and expend district funds to support that association through membership dues and other fees.

This opinion, which I hereby approve, was prepared by my assistant, Edward D. Robertson, Jr.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

Enclosures:

Op.No. 186, 7-1-69, Johnson  
Op.No. 167, 7-10-69, Branom

COMPENSATION: The county treasurers of Pettis and Platte  
COUNTY TREASURER: Counties, second class counties, are entitled  
COUNTY OFFICERS: to the compensation provided by Section 54.250,  
OFFICERS: RSMo Supp. 1975, twelve thousand dollars per  
annum, and not to the compensation provided  
by Section 54.250 of House Bills Nos. 1121 & 1257 of the 79th Gen-  
eral Assembly until the end of their terms, December 31, 1980.  
Further, such treasurers are entitled to the compensation provided  
under Section 54.251 of House Bills Nos. 1121 & 1257 of the 79th  
General Assembly in the amount of three thousand dollars per annum  
effective August 13, 1978, until January 1, 1981.

July 2, 1979

OPINION NO. 77  
(Corrected Copy)

The Honorable James L. Mathewson  
Representative, 113th District  
Room 407, Capitol Building  
Jefferson City, Missouri 65101

The Honorable John A. Birch  
State Representative, District 17  
Room 103B, Capitol Building  
Jefferson City, Missouri 65101

Dear Messers Mathewson and Birch:

This opinion is in response to Representative Mathewson's  
question asking:

"Based on sections 54.250 and 54.251 of  
the 1975 supplement [sic] to the 1969  
Revised Missouri Statutes, what is the  
salary of a 2nd class county treasurer,  
as of January 1, 1979?"

We understand that Representative Mathewson is referring  
to the treasurer of Pettis County, which is a second class  
county having a valuation of approximately one hundred twenty  
million dollars. Representative Birch asks the same question  
with respect to Platte County, which is a second class county  
with a valuation of approximtely one hundred fifty-nine million  
dollars.

House Bills Nos. 1121 & 1257 of the 79th General Assembly  
provided for the repeal of Section 54.250, RSMo Supp. 1975, and  
enacted Sections 54.250 and 54.251.



The Honorable James L. Mathewson  
The Honorable John A. Birch

Section 54.250, as enacted by House Bills Nos. 1121 & 1257, provides:

"In all counties of the second class the county treasurer shall receive an annual salary of fifteen thousand dollars for his services as well as for duties imposed by section 54.145. This salary is in lieu of all fees, charges, commissions and emoluments of whatsoever kind due the county treasurer for services rendered by virtue of any statute of this state."

Section 54.251, as enacted by House Bills Nos. 1121 & 1257, provides:

"1. In all counties of the second class, the county treasurer shall establish and administer a federal revenue sharing trust fund, and shall make a detailed report to the governing body of the county, upon its request, of the receipts into and expenditures out of the fund.

"2. In addition to any other compensation provided by law, the county treasurer shall receive three thousand dollars per annum for the performance of the additional duties required by this section. The sum required to be paid under this section shall be paid in twelve equal monthly installments out of the county treasury.

"3. The provisions of this section shall terminate January 1, 1981."

Section 54.250, RSMo Supp. 1975, provided:

"In all counties of the second class having an assessed valuation of less than three hundred million dollars as of August 13, 1974, the county treasurer shall receive an annual salary of twelve thousand dollars

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The Honorable John A. Birch

for his services as well as for duties imposed by section 54.145. This salary is in lieu of all fees, charges, commissions and emoluments of whatsoever kind due the county treasurer for services rendered by virtue of any statute of this state."

As can be seen prior to the repeal of Section 54.250, RSMo Supp. 1975, such section provided for the salary of the treasurer in second class counties such as Pettis and Platte Counties in the amount of twelve thousand dollars.

We are informed that both Pettis and Platte Counties became second class counties January 1, 1975. As a result of this transition to second class county from third class county, § 48.053, RSMo Supp. 1975, became applicable. Section 48.053 provides:

"The incumbent of the office of county treasurer of a county changing from third class to second class or from second class to third class shall continue to hold office for the term to which he was elected. His successor in office shall be elected at the general election next preceding the expiration of the incumbent's term of office to a term of two years and until his successor is elected, as provided in section 54.010, RSMo, and qualified."

We also understand however that in the general election in 1974, Pettis County elected the county treasurer for a two-year term and subsequently thereafter for a four-year term, whereas Platte County elected a treasurer for a four-year term and subsequently for a two-year term. Under Section 54.010, RSMo, third class county treasurers were elected at the general election in 1974, whereas second class county treasurers would not have been elected until the general election in 1976. While the provisions of § 48.053 are not as clear as they could be in the type of change of classification which we have here, it is our view that since such counties went from third class to second class counties as of January 1, 1975, the treasurers of such counties who were elected at the general election in 1974 should have taken office for two-year terms and their

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The Honorable John A. Birch

successors in office should have been elected at the general election in 1976 for four-year terms under § 48.053. Under this interpretation, the treasurer of Platte County would have been improperly elected to a four-year term at the general election in 1974 because, as we have stated, it is our view that the election of such treasurer in 1974 should have been for a two-year term. In addition, because the treasurer of Platte County was elected in 1974 for a four-year term, the next election which took place in Platte County at the general election in 1978 for the treasurer's office was actually for a two-year term, whereas it should have taken place at the general election in 1976 and should have been for a four-year term. We hasten to point out, however, that although it is our view that the provisions of Section 48.053 were incorrectly interpreted as applied to Platte County, the incumbent treasurer is nevertheless properly in office, and we do not challenge the right of such treasurer to that office. Therefore, at the time that such officers began their January 1, 1977, terms Section 54.250, RSMo Supp. 1975, was in effect. Section 54.250, as enacted by House Bills Nos. 1121 & 1257 was literally effective August 13, 1978, but because of the provision of Section 13 of Article VII of the Missouri Constitution, which prohibits an increase in an officer's compensation during his term, such increase could not take effect during the term of such officer. See Mooney v. County of St. Louis, 286 S.W.2d 763 (Mo. 1956).

Section 54.251, as enacted by House Bills Nos. 1121 & 1257, literally took effect August 13, 1978, and by its own terms terminates January 1, 1981. Such section requires additional duties of the second class county treasurer and provides additional compensation for the performance of such duties.

We conclude that because new additional duties are imposed upon the treasurers under Section 54.251, they are entitled to the additional compensation provided, three thousand dollars per annum, effective August 13, 1978. Where the additional compensation is for additional duties not germane to the office, Section 13 of Article VII of the Constitution is not violated. Mooney v. County of St. Louis, supra. This additional compensation will be prorated from August 13, 1978, to the end of that month and at the rate of \$250 per month thereafter.

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The Honorable John A. Birch

CONCLUSION

It is the opinion of this office that the county treasurers of Pettis and Platte Counties, second class counties, are entitled to the compensation provided by Section 54.250, RSMo Supp. 1975, twelve thousand dollars per annum and not to the compensation provided by Section 54.250 of House Bills Nos. 1121 & 1257 of the 79th General Assembly until the end of their terms, December 31, 1980. Further, such treasurers are entitled to the compensation provided under Section 54.251 of House Bills Nos. 1121 & 1257 of the 79th General Assembly in the amount of three thousand dollars per annum effective August 13, 1978, until January 1, 1981.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft".

JOHN ASHCROFT  
Attorney General

DENTISTS:  
CORPORATIONS:

A person or entity other than a dentist duly registered and currently licensed by the State of Missouri cannot own any interest in a corporation organized for the purpose of engaging in the practice of dentistry and a Chapter 351, RSMo, (General and Business) corporation cannot be lawfully established for the purpose of engaging in the practice of dentistry.

July 31, 1979

OPINION NO. 79

Mr. James R. Butler, Director  
Department of Consumer, Affairs,  
Regulation and Licensing  
505 Missouri Blvd.  
Jefferson City, Missouri 65101



Dear Mr. Butler:

This opinion is issued in response to your request concerning the following question:

"May a person or entity other than a dentist who is duly registered and currently licensed by the State of Missouri have partial or full ownership in a dental practice or corporation (established under the provisions of either Chapter 351 or 356 RSMo) organized for the purpose of engaging in the practice of dentistry in the State of Missouri?"

Historically, corporations have not been legally permitted to practice a profession such as medicine, law or dentistry because the state only examines and licenses natural persons. People by Kerner v. United Medical Service, 362 Ill. 442, 200 N.E. 157 (1936); Parker v. Board of Dental Examiners, 216 Cal. 285, 14 P.2d 67 (1932); Attorney General's Opinion No. 133, Fulkerson, 3/6/70 (copy enclosed).

The case of Dr. Allison, Dentist, Inc. v. Allison, 360 Ill. 638, 196 N.E. 799 (1935), is in point and holds that the practice of a profession is subject to licensing and regulation and should not be commercialized. The court stated:

Mr. James R. Butler, Director

" . . . To practice a profession requires something more than the financial ability to hire competent persons to do the actual work. It can be done only by a duly qualified human being, and to qualify something more than mere knowledge or skill is essential. . . . No corporation can qualify. . . ." Id. at 800.

In Parker v. Board of Dental Examiners, *supra*, it was held that a corporation or an unlicensed person may not manage, conduct or control the business side of the practice of dentistry. The court said:

" . . . If the contention of appellant be sound, then the proprietor of the business may be guilty of gross misconduct in its management and violate all standards which a licensed dentist would be required to respect and stand immune from any regulatory supervision whatsoever. His employee, the licensed dentist, would also be immune from discipline upon the ground that he was but a mere employee and was not responsible for his employer's misconduct, whether the employer be a corporation or a natural person. . . ." Id. at 72.

See Garcia v. Texas State Board of Medical Examiners, 384 F.Supp. 434 (1974).

In order to permit professionals to reap the benefits of a corporate existence, state legislatures, including the Missouri General Assembly, enacted legislation authorizing the establishment of professional corporations. See Chapter 356, RSMo 1978. Under Missouri law a corporation may be organized under the Professional Corporation Law for the purpose of delivering the type of professional service rendered by a licensed dentist. Section 356.040, RSMo.

A corporation organized under the Professional Corporation Law may issue shares of its capital stock only to individuals who are licensed to practice the profession. Section 356.070, RSMo. Therefore, part of the question submitted in the opinion request can be immediately answered. A non-dentist may not own any shares of stock in a corporation organized pursuant to the provisions of Chapter 356, RSMo.



Mr. James R. Butler, Director

The question whether a non-dentist may own shares of stock in a Chapter 351 corporation practicing dentistry cannot be answered without initially resolving the more difficult question of whether a corporation may even be organized to practice dentistry under the General and Business Corporation Law of Missouri, Chapter 351, RSMo.

Section 351.020, RSMo, provides that a corporation may be organized under the General and Business Corporation Law for any lawful purpose. Consequently, the crucial question is whether a corporation organized under this law to practice dentistry would be a corporation organized for a lawful purpose, that is, a purpose which is consistent with the laws regulating the practice of dentistry. The laws regulating the practice of dentistry are set forth in Chapter 332, RSMo.

The practice of dentistry is defined by Section 332.071, RSMo, which states in part:

"A person or other entity 'practices dentistry' within the meaning of this chapter who:

"(1) Undertakes to do or perform dental work or dental services or dental operations or oral surgery, by any means or methods, gratuitously or for a salary or fee or other reward, paid directly or indirectly to him or to any other person or entity:

\* \* \*

"(11) Directly or indirectly owns, leases, operates, maintains, manages or conducts an office or establishment of any kind in which dental services or dental operations of any kind are performed for any purpose; but this section shall not be construed to prevent owners or lessees of real estate from lawfully leasing premises to those who are qualified to practice dentistry within the meaning of this chapter;"

Under subsection (11) of Section 332.071, it is clear that if a Chapter 351 corporation holds title to an office or place of business in which the practice of dentistry is conducted, the corporation is practicing dentistry. Provisions resembling subsection (11) have been repeatedly upheld by courts in other states. See State of Washington v. Boren, 36 Wash.2d 522, 219



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P.2d 566 (1950) Furthermore, it is a well settled rule of law that a stockholder in a corporation has no legal title to its property. Legal ownership remains in the corporation, not in the shareholder. Terry v. Reciprocal Exchange, et al., 268 S.W. 421, 424 (St.L.Ct.App. 1925). Therefore, even if a dentist is the sole shareholder of a Chapter 351 corporation which owns the office in which the dentist as an employee provides dental services, the corporate entity is engaged in the practice of dentistry.

An early Missouri case relevant to this opinion request is State ex inf. Sager v. Lewin, et al., 106 S.W. 581 (St.L.Ct.App. 1907), which held that a corporation seeking "to furnish treatment for hernia and medical and surgical treatment for all other diseases, accidents and deformities" was not practicing medicine. This case is clearly distinguishable because neither ownership nor management of a doctor's office were defined as the practice of medicine at the time of the court decision. In reaching its decision, the court said that the Lewin Hernia Cure Company was only contracting with licensed physicians to render medical services as would a properly constituted hospital.

Another Missouri case of relevance to this question, is State ex inf. McKittrick v. Gate City Optical, et al., 97 S.W.2d 89 (Mo. banc 1936), which involved a quo warranto suit filed against Sears Roebuck & Co. and its lessee for establishing an optical department which employed optometrists to manage the department and examine the eyes of potential eyeglass customers. The court held that the respondents were not practicing optometry without a license; however, this case must also be distinguished because the court relied upon an unqualified exemption provision in the statutes governing the practice of optometry. No such exemption provision exists in Chapter 332, RSMo.

Sections 332.081 and 332.111, RSMo, provide that no one shall practice dentistry in Missouri unless duly registered and licensed as a dentist as provided by law. Section 332.131, RSMo, sets forth certain qualifications for registration and licensure as a dentist in Missouri:

"Any person who is at least twenty-one years of age, of good moral character and reputation, who is a graduate of and has a degree in dentistry from an accredited dental school, and who is a citizen of the United States of America may apply to the board for examination and registration as a dentist in Missouri."

Sections 332.141 - 332.161, RSMo, describe the information which must appear on a person's application for registration and

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explain the examination process. Although legally a person, a corporation cannot demonstrate it is of good moral character or a graduate of an accredited dental school; nor can any corporation take a dental board examination. Statutes forbidding the practice of dentistry by unlicensed persons and establishing the above prerequisites for licensure manifest a legislative intent that licenses should only be issued to natural persons. Without specific statutory authorization, no corporation can meet the requirements essential to the issuance of a license or be exempted from such requirements. As indicated above, the Professional Corporation Law was established to overcome this disability.

No statutory language exempting dentists practicing as a Chapter 351 corporation currently exists. Consequently, it is apparent that the General and Business Corporation Law of Missouri in authorizing the formation of corporations for any lawful purpose does not purport to include the purpose of rendering the type of professional service provided by a licensed dentist.

It may be argued that Section 332.321.2(6), RSMo, by indirection permits a Chapter 351 corporation to practice dentistry. This section states in pertinent part:

"2. Unprofessional or dishonorable conduct in the practice of dentistry shall include the following:

\* \* \*

"(6) Accepting or tendering or paying 'rebates' to or 'splitting fees' with any other person; provided, however, that nothing herein shall be so construed as to make it unlawful for a dentist practicing in a partnership or as a corporation from distributing profits in accordance with his stated arrangement;" [emphasis added]

The primary rule of statutory construction is to ascertain the intent of the lawmakers from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning. State v. Kraus, 530 S.W.2d 684, 685 (Mo. banc 1975). In interpreting a statute, the language is to be harmonized if at all possible. Owen v. Riffie, 323 S.W.2d 765 (Mo. 1959). The interpretation should

Mr. James R. Butler, Director

avoid an absurd result. State ex rel. Dravo Corp. v. Spradling, 515 S.W.2d 512 (Mo. 1974). The above provision was enacted in 1969, subsequent to the enactment of the Professional Corporation Law. The most reasonable interpretation of the reference to a dentist practicing "as a corporation" is that the language merely recognizes the existence of Chapter 356 and presumes that any corporation practicing dentistry is legally authorized to do so. Such an off-hand reference could not have been intended to authorize the practice of dentistry by any corporate entity without restrictions on who could own stock or manage and operate the practice. Surely this provision was not intended to allow a non-professional with only a profit motive to control a corporate dental practice when such activity is clearly forbidden if there exists no corporate entity.

Therefore, since it is apparent that a Chapter 351 corporation cannot be lawfully established for the purpose of practicing dentistry, it is unnecessary to address the question of whether a non-dentist can own shares of stock in such a corporation.

#### CONCLUSION

It is the opinion of this office that a person or entity other than a dentist duly registered and currently licensed by the State of Missouri cannot own any interest in a corporation organized for the purpose of engaging in the practice of dentistry and a Chapter 351, RSMo, (General and Business) corporation cannot be lawfully established for the purpose of engaging in the practice of dentistry.

The foregoing opinion which I hereby approve, was prepared by my assistant, Jerry Short.

Sincerely,

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

65101

March 28, 1979

OPINION LETTER NO. 80

Mr. F. M. Wilson, Director  
Department of Public Safety  
621 East Capitol Avenue  
Jefferson City, Missouri 65101

Dear Mr. Wilson:

This letter is in response to your questions asking:

"A. Do the statutes prohibit the use of a flashing strobe light on a school bus which has been mounted on the roof and centered at or near the rear?

"B. If the statutes do not prohibit the use of this light, must it be of a specific color? If so, what?

"C. Is it necessary for the Director of the Department of Public Safety to approve this lighting device if the State Board of Education adopts a regulation permitting its use?

"D. Is it legal for the Director of the Department of Public Safety to approve a roof-mounted flashing strobe light for school buses since the American Association of Motor Vehicle Administrators (AAMVA) has only approved it for use on authorized emergency vehicles?"

Mr. F. M. Wilson

You have enclosed two prior opinions of this office with your request. In Opinion No. 195-1976 which you enclosed, this office concluded that the authority of the Director of the Department of Revenue to approve or disapprove the use of a lighting system for motor vehicles under Section 307.030, RSMo, was transferred to the Director of the Department of Public Safety under the Omnibus State Reorganization Act. You also enclosed Opinion No. 290-1966 in which this office held that the use of the device known as hazard warning lights is unlawful in this state except on school buses, certain United States mail vehicles and emergency vehicles described in Section 304.022, RSMo. We point out, however, that Opinion No. 290-1966 was withdrawn and is not to be considered as authority. Such withdrawal was on the basis of the requirements of the federal law, 15 USCA 1392(d) which provides that no state shall impose a requirement contrary to federal motor vehicle safety standards.

Section 307.030 provides:

"1. The director of revenue [Director of the Department of Public Safety] is hereby given authority to pass upon the lighting equipment of any vehicle, motor vehicle, or motor-drawn vehicle with a view to its safety for use on a street or highway.

"2. The director of revenue is hereby authorized to promulgate rules and regulations not inconsistent with this chapter, and publish same.

"3. The director of revenue may require the approval of any lighting equipment or lighting device, and charge a fee therefor of fifty dollars for each device or each single lighting device submitted for approval, and may set up the procedure which may be followed when any lighting equipment or lighting device is submitted for approval.

"4. The director of revenue may revoke or suspend for cause, after hearing, any certificate of approval that may be issued covering any lighting equipment or lighting device under this chapter."

Mr. F. M. Wilson

Section 304.060, RSMo, as amended by the Laws of 1977, provides:

"1. The state board of education shall adopt and enforce regulations not inconsistent with law to cover the design and operation of all school buses used for the transportation of school children when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and such regulations shall by reference be made a part of any such contract with a school district. The state board of education may adopt rules and regulations governing the use of other vehicles owned by a district or operated under contract with any school district in this state and used for the purpose of transporting school children; provided that such other vehicles shall not transport more than four school children at any one time and the operator shall be licensed in accordance with section 302.070. Every school district, its officers and employees, and every person employed under contract by a school district shall be subject to such regulations. The state board of education shall cooperate with the state highway department and the state highway patrol in placing suitable warning signs at intervals on the highways of the state.

"2. Any officer or employee of any school district who violates any of the regulations or fails to include obligation to comply with such regulations in any contract executed by him on behalf of a school district shall be guilty of misconduct and subject to removal from office or employment. Any person operating a school bus under contract with a school district who fails to comply with any such regulations shall be guilty of breach of contract and such contract shall be canceled after notice and hearing by the responsible officers of such school district."

Mr. F. M. Wilson

Section 307.100, RSMo, provides:

"Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, front direction signals, or auxiliary lamps which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle. Alternately flashing warning signals may be used on school buses when used for school purposes and on motor vehicles when used to transport United States mail from post offices to boxes of addressees thereof and on emergency vehicles as defined in section 304.022, but are prohibited on other motor vehicles, motorcycles and motor-drawn vehicles except as a means for indicating a right or left turn."

We are not advised with respect to the candlepower of the light. We assume that the strobe light does not project a beam of light so as to conflict with the candlepower requirements of Section 307.100.

The information that you have furnished us indicates that the one strobe light would be mounted on the rear top of the school bus. Assuming that such light consists of one unit in such a position the question arises as to whether or not such a flashing light would be an "alternately" flashing warning signal as the term is used in Section 307.100. Obviously, a flashing warning signal would be a light that varies in intensity. The question we must consider with respect to the use of such terminology in Section 307.100 is whether the use of the word "alternately" is simply redundant when used in conjunction with the words "flashing warning signals". We note that the sentence in which such phraseology is used also contains the provision at the end of such sentence that states "but are prohibited on other motor vehicles, motorcycles and motor-drawn vehicles except as a means for indicating a right or left turn." In this context it appears that since a right or left turn signal would not alternately flash with another opposite signal such use of the word "alternately" by the legislature must have been simple redundancy. This appears to be more apparent when it is considered that if the legislature had actually



Mr. F. M. Wilson

intended that the flashing warning signals be alternate, that is more than one flashing light and not in sequence, the legislature probably would have also provided where such lights would be located. In fact, the words "alternately-flashing" were originally connected by a hyphen. See Laws 1955, page 625, Section 1, and Laws 1957, page 633, Section 1. In our view the use of the word "alternately" was simple redundancy and therefore a flashing warning signal such as a single strobe light would be within the provision authorizing warning signals under Section 307.100.

You have also asked us with respect to the color of such lights. Section 307.095 provides that red lights may be used on school buses when used for school purposes. However, we know of no provision of state law prohibiting the school bus from using a specific color.

You also ask whether it is necessary for the Director of the Department of Public Safety to approve this lighting device if the State Board of Education adopts a regulation permitting its use. We think it is clear that it is necessary for the Director of the Department of Public Safety to approve the lighting device because under the provisions of Section 304.060, which we have quoted above, the State Board of Education has authority to adopt and enforce regulations not inconsistent with the law to cover the design and operation of all school buses used for the transportation of school children, as provided therein. Therefore, it is necessary for the Director of the Department of Public Safety to first approve the device before the State Board of Education may adopt the device under Section 304.060.

You also ask whether it is legal for the Director of the Department of Public Safety to approve such a device which has only been approved by the American Association of Motor Vehicle Administrators for use on emergency vehicles.

We find nothing in the Agreement for Uniform Approval of Motor Vehicle Safety Equipment which you have furnished to us which would prohibit the Director of the Department of Public Safety from approving such a device. Nor, do we find any provision of state law which prohibits the use of such a device when it has not been approved by the American Association of Motor Vehicle Administrators. We therefore conclude that the Director of the Department of Public Safety may approve such a device even though it has not been approved by the American Association of Motor Vehicle Administrators for such use on school buses.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long, sweeping horizontal stroke extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

March 26, 1979

OPINION LETTER NO. 82

Honorable John T. Russell  
State Senator, 33rd District  
Room 419B, Capitol Building  
Jefferson City, Missouri 65101

Dear Senator Russell:

This letter is in response to your question asking:

"Is it possible for a hospital district to contract with a county court in an adjoining county which is not part of the hospital district, for the purpose of operating ambulances owned by the adjoining county? If it is possible to contract and operate, can the ambulance be stationed or garaged in the adjoining county?"

You also state:

"Hickory County has been operating an ambulance service under contract with a private concern; however, this is no longer economically feasible. Since the private firm terminated its contract with Hickory County, there has been no ambulance service. Hickory County has two ambulance vehicles but have not been able to arrange for any type of service. In the adjoining county of St. Clair, there

Honorable John T. Russell

is a hospital district which operates an ambulance service in connection with the hospital. The Hickory County Court would like to contract with the hospital district to operate an ambulance service in Hickory County. The Hickory County Court, obviously, would want the ambulance stationed or garaged in Hickory County so that service would be more readily accessible to the people of the area. The ambulance, however, could operate into the hospital district to and from the hospital. It is my understanding the Hickory County Court proposes that one ambulance be garaged at Weaubleau which is only two miles from the St. Clair County line. The other would be garaged at Hermitage."

Section 67.300, RSMo, with respect to the powers of a county providing an ambulance service, provides in pertinent part:

"1. Any county, city, town or village may provide a general ambulance service for the purpose of transporting sick or injured persons to a hospital, clinic, sanitorium or other place for treatment of the illness or injury, and for that purpose may

\* \* \*

"(2) Contract with one or more individuals, municipalities, counties, associations or other organizations for the operation, maintenance and repair of such vehicles and for the furnishing of emergency treatment;

"(3) Employ any combination of the methods authorized in subdivisions (1) and (2) of this section."

Section 206.110, RSMo, with respect to the powers of a hospital district provides in pertinent part:

"1. A hospital district shall have and exercise the following governmental powers, and all other powers incidental, necessary convenient or desirable to carry out and effectuate the expressed powers:

Honorable John T. Russell

\* \* \*

"(3) To operate, maintain and manage a hospital and hospital facility, and to make and enter into contracts for the use, operation or management of and to provide rules and regulations for the operation, management or use of the hospital or hospital facility.

\* \* \*

"(6) To employ or enter into contracts for the employment of any person, firm or corporation, and professional services, necessary or desirable for the accomplishment of the corporate objects of the district or the proper administration, management, protection or control of its property.

"(7) To maintain the hospital for the benefit of the inhabitants of the area comprising the district who are sick, injured, or maimed regardless of race, creed or color, and to adopt such reasonable rules and regulations as may be necessary to render the use of the hospital of the greatest benefit to the greatest number; to exclude from the use of the hospital all persons who willfully disregard any of the rules and regulations so established; to extend the privileges and use of the hospital to persons residing outside the area of the district upon such terms and conditions as the board of directors prescribes by its rules and regulations."

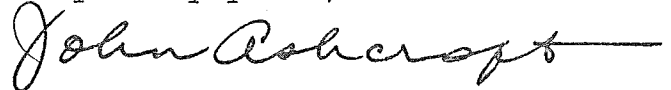
In Opinion No. 375-1968, copy enclosed, we concluded that a hospital district organized under Chapter 206, RSMo, has authority to provide an ambulance service to the inhabitants of the hospital district as an incident to the operation of the hospital after the hospital is established although the district does not have authority to furnish general ambulance service provided for in Section 67.300.

Honorable John T. Russell

In view of the fact that under the provisions of Section 206.110(7), RSMo, the hospital district can serve persons within and without the district, ambulance services can be furnished by the district to persons within and without the district because such services are incidental to the operation of the hospital district facilities. However, the district has no authority to furnish ambulance services except to persons to be transported to or from the hospital facilities of the district.

We find nothing that requires that ambulances operated by a hospital district must be stationed or garaged within the hospital district.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", followed by a horizontal line.

JOHN ASHCROFT  
Attorney General

Enclosure:

Op.No. 375-1968

*Attorney General of Missouri*

JEFFERSON CITY

65101

(314) 751-3321

JOHN ASHCROFT  
ATTORNEY GENERAL

September 5, 1979

Opinion Letter No. 83  
(Answer by Letter - Turnbull)

The Honorable Ron Bockenkamp  
Representative, District 128  
Route 2, Box 101  
Farmington, Missouri 63640

Beverley Wilson, M.D.  
Acting Director  
Department of Mental Health  
2002 Missouri Boulevard  
Jefferson City, Missouri 65101

Dear Dr. Wilson and Mr. Bockenkamp:

This letter is in response to your opinion request in which you asked the following questions:

1. Does §198.425, RSMo Supp., 1975, exclude from admission to boardinghouses those declared legally incompetent pursuant to Chapter 475, RSMo?
2. Does §198.425 exclude from admission to boardinghouses those who are incompetent in the judgment of attending staff but who have not been adjudicated legally incompetent, pursuant to Chapter 475, RSMo?
3. Does §202.185 RSMo 1978 permit the placement in boardinghouses of any mentally ill patient, whether adjudicated legally incompetent pursuant to Chapter 475 RSMo, or believed by attending staff to be incompetent absent a judicial declaration?
4. Does §202.193 RSMo 1978 permit the placement in boardinghouses of mentally retarded patients?

5. Is the Department obligated to remove patients currently residing in boardinghouses who have been adjudicated legally incompetent, who are believed by attending staff to be mentally incompetent, or who are mentally retarded?

The answer to these questions depends on resolving an apparent conflict between the cited statutory sections.

Section 198.400 defines a "boardinghouse for the aged" as a place

"catering to and providing care incidental to old age to...persons who are sixty years of age or over, all of whom are able to care for themselves...and are provided with shelter, board, or laundry... but this term shall not include any facilities licensed under the provisions of sections 198.011 to 198.360" (emphasis supplied).

Section 198.425 excludes certain groups from admission into boardinghouses, stating that

"No boardinghouse shall admit or care for persons who require the services of a nurse or attendant or who are in need of personal services other than occasionally. No boardinghouse shall admit or care for persons who have been declared as mentally incompetent or who are mentally retarded or for persons addicted to the use of narcotics so as to have lost the power of self-control" (emphasis supplied).

In apparent contrast, Section 202.185 allows the head of a mental health facility to place "any patient, whether voluntary or involuntary, in a licensed boardinghouse..." (emphasis supplied). Similarly, the head of a mental retardation facility "may place any patient, whether voluntary or involuntary, in a licensed boardinghouse..." Section 202.193. The two sections also provide for consultation with and the consent of a guardian prior to placement of a ward, sanctioning implicitly the placement in licensed boardinghouses of the mentally incompetent.

Because of this apparent conflict in the statutes, it is necessary first to determine whether sections 202.185 and 202.193, effective January 2, 1979, repealed section 198.425 by implication.



Section 198.425 has not been repealed explicitly and therefore could have been repealed only implicitly. However, application of the rules of statutory construction leads to the conclusion that section 198.425 has not been repealed.

Repeal of a statute by implication is not favored, Riley v. Holland, 243 S.W.2d 79,362 Mo. 682 (1951), and occurs only when necessary, White v. Greenway, 263 S.W.2d 104, 303 Mo. 691 (1924). If statutory sections conflict, the section treating the subject "in a minute and particular way will prevail over one of a more general nature..." Vining v. Probst, 186 S.W.2d 611 (Mo. App. 1945).

Section 198.425 excludes specific types of individuals from boardinghouses for the aged. In contrast, sections 202.185 and 202.193 are "of a more general nature" and establish the general placement authority of heads of mental health facilities. Therefore, it is our opinion that Section 198.425 has not been repealed by Sections 202.185 and 202.193.

Section 198.425 explicitly excludes from admission into boardinghouses for the aged the "mentally retarded" and those "who have been declared as mentally incompetent." The phrase "mental retardation" is defined in Section 202.010(17), RSMo 1979, which includes the requirement that mental retardation be "diagnosed by clinical authorities as such." Those individuals meeting this definition are not eligible for admission into boardinghouses for the aged.

It is more difficult to ascertain the meaning of "declared as mentally incompetent." The section under discussion provides no definition of the term "declared," and one can only infer that the phrase refers to those "adjudicated" incompetent in a judicial proceeding pursuant to Chapter 475. It is our opinion that this inference is correct, primarily because there is little if any evidence to support another meaning.

A person may be adjudicated incompetent "of either managing his property or caring for himself or both." Section 475.010(3) The two types of guardianship are "separate and distinct." Op. Atty. Gen. No. 25, Duval 7-9-59. It is clear that a person adjudicated incompetent because incapable of "caring for himself" cannot be admitted to a boardinghouse for the aged, since by definition such a facility may admit only those "all of whom are able to care for themselves." Section 198.400 RSMo 1978.

It is less clear that those individuals having only guardians of the estate fall within the exclusion. A guardian of the estate is concerned only with the financial affairs of the ward, see Section 475.130 RSMo 1979. However, there is no evidence that the legislature wished to distinguish between those individuals adjudicated legally incompetent and absent any evidence we cannot attribute such a wish to the legislature.

Therefore, it is our opinion that section 198.425 excludes from admission into boardinghouses for the aged the mentally retarded and those adjudicated incompetent pursuant to chapter 475.

In sum, we answer the questions contained in this request in the following manner:

1. Section 198.425 does exclude from admission into boardinghouses for the aged those declared legally incompetent pursuant to Chapter 475.
2. Section 198.425 does not exclude from admission into boardinghouses for the aged those not declared incompetent pursuant to Chapter 475 but deemed incompetent in the judgment of attending staff. However, those individuals must meet the other statutory criteria for admission established by Section 198.400, et. seq.
3. Section 202.185 did not repeal Section 198.425 and therefore does not allow the placement of those declared mentally incompetent in boardinghouses for the aged.
4. Section 202.193 did not repeal Section 198.425 and therefore placement of the mentally retarded in boardinghouses for the aged is not permitted.

Question five of this request asks whether the Department of Mental Health is obligated to remove from boardinghouses for the aged those patients in its care who are mentally retarded or who have been adjudicated incompetent. That is a question which the Department of Mental Health must resolve. However, it should be noted that the Omnibus Nursing Home Act of 1979, effective September 28, 1979, repeals Sections 198.400 and 198.425 and Senate Bills Nos. 328, 432, 35 and 419, 80th General Assembly, establishes new criteria for admission into boardinghouses for the aged. The criteria are as follows:

"Section 24.1. A residential care facility or adult boarding facility shall admit or retain only those persons who are capable mentally and physically of negotiating a normal path to safety using assistive devices or aids when necessary, and who are substantially capable of caring for their personal needs within the limitations of such facilities, and who do not require hospitalization or intermediate skilled nursing care."

This language eliminates the exclusion from boardinghouses of certain types of individuals. Instead, the determination of a person's fitness for admission is made on a case by case basis applying the criteria established by statute.

The section cited becomes effective September 28, 1979. In our opinion, the individuals excluded from admission under the existing statutory language should not be removed wholesale from the boardinghouses in which they reside currently, given the likelihood that many would be eligible for return on September 28. Rather, we suggest that the Department of Mental Health evaluate under the new criteria those patients it has placed in boardinghouses. If the individual meets the statutory criteria, he or she should be allowed to remain in the boardinghouse.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

ARRESTS:  
CRIMINAL LAW:  
CRIMINAL PROCEDURE:

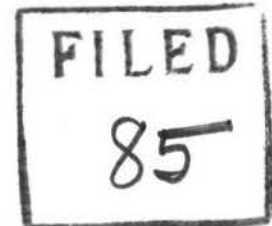
State capitol guards and watchmen employed and commissioned in accordance with Section 8.035, RSMo Supp. 1975, have the authority to make arrests in

the buildings and on the grounds at the seat of government of the state of Missouri; that the prosecuting attorney of Cole County has the authority to prosecute such violations in the circuit court of Cole County; and that the guards and watchmen who are regularly employed in a workweek for 32 hours or more and commissioned after December 31, 1978, in accordance with Section 8.035 must meet the minimum police training standards under Sections 590.100 through 590.150, V.A.M.S.

OPINION NO. 85

May 14, 1979

Mr. Stephen C. Bradford  
Commissioner  
Office of Administration  
Room 125, State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Bradford:

This is in response to your opinion request asking the following questions:

- "1. Do guards and watchmen employed and commissioned in accordance with section 8.035, R.S. Mo., 1975 Cumulative Supplement, have the authority to make arrests in the buildings and grounds of the seat of government of the State of Missouri?
- "2. If the guards make arrests or issue summons for violations of the parking and traffic regulations promulgated pursuant to section 8.172, 8.174, 8.176, and 8.178, does the Prosecuting Attorney of Cole County, Missouri have the authority to prosecute these violations?
- "3. Do guards and watchmen employed and commissioned in accordance with section 8.035 have to meet the training

Mr. Stephen C. Bradford

standards of the Missouri Minimum Police Standards Act (House Bill Nos. 879/899, Second Regular Session, 79th General Assembly)?"

Section 8.035, RSMo Supp. 1975, provides as follows:

"The commissioner of administration may employ guards and watchmen required at the seat of government within the limits of the appropriation. Each guard and watchman employed, before entering on his duties, shall take and subscribe an oath of office to perform his duties faithfully and impartially, and shall be given a certificate of appointment, a copy of which shall be filed with the secretary of state, granting him the same powers now held by other peace officers to maintain order, preserve the peace and make arrests in the buildings at the seat of government and on the grounds thereof."

Section 8.172, RSMo 1969, provides as follows:

"The director of the division of planning and construction shall make rules and regulations for the regulation of traffic and parking at all parking space upon the capitol grounds and upon the grounds of other state buildings located within the capital city. The regulations shall be enforced by guards."

Section 8.174, RSMo 1969, provides as follows:

"During sessions of the general assembly the director shall provide parking space for each member and shall plainly mark the same so that the space is available at the hours determined by the director for the use of the members during each regular or special session."

Section 8.176, RSMo 1969, provides as follows:

"The director of the division of planning and construction shall appoint a sufficient number of capitol guards so that the

Mr. Stephen C. Bradford

capitol grounds may be patrolled at all times, and that traffic and parking upon the capitol grounds and the grounds of other state buildings within the capital city may be properly controlled. A guard may make arrests for the violation of parking and traffic regulations promulgated by the director."

Section 8.178, House Bill No. 1634, 2nd Regular Session of the 79th General Assembly, provides as follows:

"Any person who violates sections 8.172 to 8.176 or any of the traffic or parking regulations of the director shall be punished as follows: Fines for traffic violations shall not exceed five dollars for overparking, fifteen dollars for double parking and fifty dollars for speeding, and the circuit court of Cole county has authority to enforce this law."

Under Section 56.060, RSMo Supp. 1975, each prosecuting attorney shall commence and prosecute all criminal and civil actions in his county in which the county or state is concerned. Thus, it would appear that the prosecuting attorney of Cole County has jurisdiction over the enforcement of state traffic violations which are brought in the circuit court of Cole County involving violations committed in his county.

In connection with the power of arrest under Section 8.035, it appears that the power of arrest may be conferred by statute on officers who may not be recognized as peace officers at common law. In other words, particular officers may by statute be given like status as peace officers at common law as to the power to arrest without warrant. See 6A C.J.S. Arrests § 17. Another example of this is found in Frank v. Wabash Railroad Company, 295 S.W.2d 16 (Mo. 1956). Thus, it appears that the capitol guards and watchmen who are properly commissioned under Section 8.035 would have the same powers of arrest granted to other peace officers to maintain order, preserve the peace, and make arrests in the buildings at the seat of government and on the grounds thereof.

In connection with your third question regarding whether guards and watchmen employed and commissioned in accordance with Section 8.035 have to meet minimum police training standards, the Second Regular Session of the 79th General Assembly enacted a Missouri minimum police training bill. This is cited as Sections



Mr. Stephen C. Bradford

590.100 through 590.150, V.A.M.S. Supplementary Pamphlet. Section 590.100 defines "peace officer" for the purposes of requiring training in terms of:

" . . . members of the state highway patrol, all state, county, and municipal law enforcement officers possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state who regularly work more than thirty-two (32) hours a week."

Pursuant to Section 590.110, effective January 1, 1979, no person shall be employed or appointed as a peace officer by any public law enforcement agency which is possessed of the duty and power to enforce general criminal laws of this state or the ordinance of any political subdivision of this state unless he is certified by the Director as a peace officer as provided in the minimum police training bill. Further, any person who is employed or appointed as a peace officer after December 31, 1978, shall be employed or appointed on a temporary or probationary basis and the hiring agency shall within one year after the employee has assumed his office take all necessary steps to have him qualified for certification by the Director of the Department of Public Safety.

There appears to be no question but that the statutes which are to be enforced by the capitol guards and watchmen constitute general criminal laws in this state and that the guards and watchmen have full power of arrest. Therefore, capitol guards and watchmen employed and commissioned after December 31, 1978, in accordance with Section 8.035, who regularly work more than 32 hours a week in such capacity, must meet the requirements of Sections 590.100 through 590.150.

#### CONCLUSION

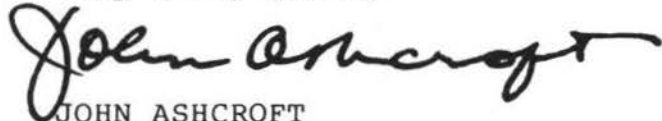
It is the opinion of this office that state capitol guards and watchmen employed and commissioned in accordance with Section 8.035, RSMo Supp. 1975, have the authority to make arrests in the buildings and on the grounds at the seat of government of the state of Missouri; that the prosecuting attorney of Cole County has the authority to prosecute such violations in the circuit court of Cole County; and that the guards and watchmen who are regularly employed in a workweek for 32 hours or more and commissioned after December 31, 1978, in accordance with Section 8.035 must meet the minimum police training standards under Sections 590.100 through 590.150, V.A.M.S.



Mr. Stephen C. Bradford

The foregoing opinion, which I hereby approve, was prepared by my assistant, Terry C. Allen.

Very truly yours,

A handwritten signature in black ink, reading "John Ashcroft". The signature is written in a cursive style with a large, stylized "J" and "A".

JOHN ASHCROFT  
Attorney General

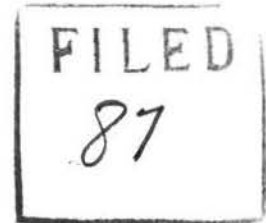
PROSECUTING ATTORNEYS:  
COMPENSATION:

The annual salary of the prosecuting attorney of Cole County, Missouri, is twenty-one thousand dollars pursuant to the provisions of Section 56.270, House Bill Nos. 1121 & 1257, Second Regular Session, 79th General Assembly.

OPINION NO. 87

March 28, 1979

Honorable Thomas J. Brown III  
Prosecuting Attorney  
Cole County Courthouse, Room 400  
Jefferson City, Missouri 65101



Dear Mr. Brown:

This opinion is in response to your question asking:

"As of January 1, 1979, what is the salary of the prosecuting attorney in all second class counties other than counties of the second class having a population of more than 100,000 inhabitants based on the 1970 Census, or in the counties of the second class having a population of more than 30,000 based on the 1970 Census and containing part of a city having a population of more than 450,000, and of counties of the second class having a population of more than 80,000 but less than 90,000 based on the 1970 Census?"

You also state that your request concerns an interpretation of Section 56.270 as amended by both House Bills 1121 & 1257 and Senate Bill 69, both of the Second Regular Session, 79th General Assembly.

Both of these bills amended Section 56.270, RSMo Supp. 1975, relating to the compensation of prosecuting attorneys in second class counties.

Honorable Thomas J. Brown III

The amendment made to Section 56.270 by House Bills 1121 & 1257 provides as follows:

"The prosecuting attorney in all counties of the second class having a population of more than one hundred thousand inhabitants based on the 1970 Census, or in the counties of the second class having a population of more than thirty thousand based on the 1970 Census and containing part of a city having a population of more than four hundred and fifty thousand, and of counties of the second class having a population of more than eighty thousand but less than ninety thousand based on the 1970 Census shall receive for his service an annual salary of twenty-seven thousand five hundred dollars. The prosecuting attorney in all other counties of the second class shall receive for his services an annual salary of twenty-one thousand dollars."

The category with which you are concerned is that which is enumerated in the last sentence of such amended section which refers to the prosecuting attorney in "all other counties of the second class."

Senate Bill 769 amended Section 56.270 so that the resulting provisions are similar to those contained in Section 56.270 as amended by House Bills 1121 & 1257 except that the salary provided for the prosecuting attorney in "all other counties of the second class" was prescribed as nineteen thousand dollars in Senate Bill 769.

Section 56.270, RSMo Supp. 1975, was similar to the provisions as amended by both House Bills 1121 & 1257 and Senate Bill 769 except for the salaries provided and except that both amended versions contained the language "based on the 1970 Census" in the three places where it is now found in such amended bills. The provisions of Section 56.270, RSMo Supp. 1975, provided for a salary of nineteen thousand dollars for the prosecuting attorney in "all other counties of the second class." It is clear, therefore, that with respect to such prosecuting attorneys in "all other counties of the second class" Senate Bill 769 merely continued the old provisions for an annual salary of nineteen thousand dollars whereas the provisions of such section as amended by House Bills 1121 & 1257 provided for an increase in such salaries of prosecuting attorneys in such other counties to twenty-one thousand dollars.

Honorable Thomas J. Brown III

Section 56.270 as amended by House Bills 1121 & 1257 became literally effective August 13, 1978, and Senate Bill 769 became literally effective August 13, 1978. Clearly, the increase in compensation could not take effect as to incumbent prosecutors during their terms of office. Section 13, Article VII, Missouri Constitution. Such prosecutors, however, began a new term on January 1, 1979, and that is the date to which you refer. Section 56.010, RSMo.

In our Opinion No. 180-1978, copy enclosed, this office set out what we believe to be the appropriate rules of construction for the interpretation of the type of conflict we have here. In that opinion we expressed the view that we should not follow mechanical rules of construction but instead should attempt to arrive at the legislative intent by reading the provisions of both acts together and in doing so give effect to the new provisions of the acts and disregard conflicting old provisions which were merely reenactments of the repealed law.

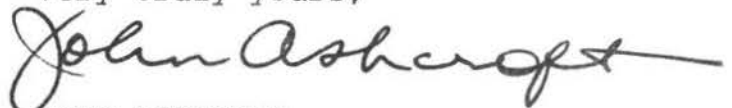
Using the construction which we adopted in Opinion 180-1978 we conclude that the salary of the prosecuting attorney in "all other counties of the second class", which includes Cole County, as of January 1, 1979, would not be nineteen thousand dollars as provided for in the repealed law and in Senate Bill 769 but would be twenty-one thousand dollars as provided for in the new provision contained in House Bills 1121 & 1257.

#### CONCLUSION

It is the opinion of this office that the annual salary of the prosecuting attorney of Cole County, Missouri, is twenty-one thousand dollars pursuant to the provisions of Section 56.270, House Bill Nos. 1121 & 1257, Second Regular Session, 79th General Assembly.

The foregoing opinion which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN ASHCROFT  
Attorney General

Enclosure:  
Op.No. 180-1978

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

(314) 751-3321

65101

October 2, 1979

OPINION LETTER NO. 88

The Honorable Edwin L. Dirck  
State Senator, Room 420  
Capitol Building  
Jefferson City, Missouri 65101

Dear Senator Dirck:

This letter is in response to your request for an opinion of this office asking as follows:

- "1. May the tax collections received by the Collector of St. Louis County on behalf of the taxing authorities in the county be daily deposited with the Treasurer of St. Louis County?
2. Provided that the Treasurer of St. Louis County may receive deposits of these funds, what are the conditions and his rights with respect to such monies deposited with him?
3. May the Treasurer of St. Louis County invest those funds so deposited and what are the conditions under which the investments must be made?
4. Assuming investments are allowed, in which types of investments may or may not these collector's funds be invested (by the treasurer)?
5. Assuming these monies are invested, to whom is the interest earned on those funds payable?"

The Honorable Edwin L. Dirck

You also state:

"Currently the St. Louis County Collector deposits the receipts of local taxing authorities in a checking account and disburses monies from the same. The funds are not officially deposited with the Treasurer. An audit report and County Council discussions suggest a daily deposit of these funds with the treasurer and investment by him would provide better cash management."

We have received an opinion from the Honorable Thomas W. Wehrle, St. Louis County Counselor, regarding the questions you asked. We enclose a copy of such opinion, a copy of the applicable St. Louis County ordinances, and a copy of the depository contract form. We believe that Mr. Wehrle's opinion responds to your questions.

While we do not wish to either appear to agree or disagree with Mr. Wehrle's conclusions, we believe that we should point out to you that since the questions you asked involve an interpretation of the charter provisions of St. Louis County, it is our view that it would be inappropriate for this office to pass upon such questions in the form of an official opinion under § 27.040, RSMo.

We trust, however, that the information furnished you herewith is sufficient for your purposes.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", with a stylized flourish at the end.

JOHN ASHCROFT  
Attorney General

Enclosures 3

P  
RINTER 5-10-79

SCHOOLS:                   The extension of city limits in a second class county automatically extends the school district boundary lines of such city, regardless of the fact that the county becomes a first class county prior to the effective date of the extension.

OPINION NO. 89

May 10, 1979

Honorable Clifford W. Gannon  
State Senator, District 22  
Room 330, State Capitol Building  
Jefferson City, Missouri 65101

Dear Senator Gannon:

This opinion is being issued in response to your question, stated as follows:

"Which of the following takes precedence in this matter: an annexation election which extended the city limits and would thereby extend the school district boundaries the next July 1; or prior to the July 1 date, a change in the status of the county from second class to first class? Such automatic extensions of school district boundaries are excepted in first class counties."

You have provided the following factual situation in relation to your request:

"On August 8, 1978 the voters in the City of Crystal City, which comprises the major portion of Crystal City School District #47, voted to annex an area south of the city. At that time Jefferson County was a second class county. Therefore, according to section 162.421 the boundaries of the Crystal City School District #47 would be automatically extended----'effective on the first day of July next following the extension of the limits of the city.....'

"In January 1979 Jefferson County attained first class status. Automatic extensions of the school district boundaries do not apply in first class counties. Therefore,



Honorable Clifford W. Gannon

the question is one of whether the effect of the annexation election continues as scheduled or is superseded by the change in county status."

Section 162.421, V.A.M.S., provides:

"1. Except districts containing a city or a part of a city having more than seventy-five thousand inhabitants and districts in counties of the first class, the extension of the limits of any city or town beyond the boundaries of a six-director school district in which it is included shall automatically extend the boundaries of that district to the same extent, effective on the first day of July next following the extension of the limits of the city or town, and except in counties of the second class if the extension of the limits of the city or town includes territory contained in another six-director school district which maintains a high school, then the school district boundary lines shall not be enlarged to include territory in said six-director district by reason of the extension of the city or town limits.

"2. Whenever, by reason of the extension of the limits of any city or town, a portion of the territory of any school district adjacent thereto is incorporated in a six-director district, the inhabitants of the remaining parts of the district have the right to be annexed to the six-director district. When such part of a school district desires to be so annexed, the question shall be submitted as provided in section 162.441, and if a majority of the votes cast favor annexation, the secretary shall certify the fact, with a copy of the record, to the board of the district and to the board of the six-director school district; whereupon the board of the six-director district shall meet and confirm the annexation by a proper resolution of record. When such part of a school district has no organization, any ten voters may call a meeting of the district and proceed as provided in section 162.441; and the secretary of the meeting shall certify, if the majority votes for annexation, to the board of

Honorable Clifford W. Gannon

directors of the six-director district, and the same action shall be taken as provided above."

We have also been advised that the area annexed by Crystal City is located in both the Jefferson R-7 School District and the Festus School District. The latter is a six-director district which maintains a high school; the former is not. We understand that if the annexation is considered effective to extend the boundaries of the Crystal City School District, such extension would only include that territory formerly belonging to the Jefferson R-7 School District.

Although we have found no cases interpreting § 162.421 with respect to the issue you have raised, it appears that the language of that statute and also the language of § 162.031 provides guidance in determining whether the legislature intended that a change in county classification before the effective date of the extension of school district boundaries should nullify the extension.

We note first that the language of § 162.421(1) is framed to cause an "automatic" extension of school district boundary lines upon the extension of city limits. In this context, the word automatic means that no further action is needed to effect the change in school district boundary lines, and that the change in the boundary lines is considered to have taken place as of the date of the extension of the city limits, although the change is not "effective" until the following July. The only conditions under which the statute will not operate to cause the automatic change are where the district contains a city or part of a city having more than 75,000 inhabitants or where the district is located in a county of the first class. Thus it appears that if these two conditions or exceptions are not applicable at the time the city limits are extended, the simultaneous extension of school district boundary lines is accomplished. The purpose of delaying the effective date of the change in the school district boundary lines to the following July appears to be a method for avoiding mid-year school changes for pupils and a method for providing an adequate time for orderly transition, rather than a time during which the original conditions must continue to be met.

That the change in school district boundary lines should be considered to have conclusively occurred on the date of the extension of the city limits is supported by § 162.031, RSMo 1969. That statute provides, in pertinent part:

"1. Whenever . . . (2) the boundary lines of any district are changed by the changing

Honorable Clifford W. Gannon

of the boundary lines of any city, incorporated town, or school district, . . . the board of the school district from which land has been taken and the school board of the district to which land has been annexed, or which has been newly created, shall make a just and proper adjustment and apportionment of all school property, real and personal, including moneys and a like apportionment of indebtedness, if any, to and among the school districts. The adjustment and apportionment shall be made as of the date of the vote of the electors effecting the annexation, change of boundaries, or creation." (Emphasis supplied)

Thus, the apportionment of property and indebtedness is to be determined as of the date of the vote to extend the city limits in this case, and not as of the next July when the change of school district boundary lines becomes effective, since the latter date is not the occasion for any vote.

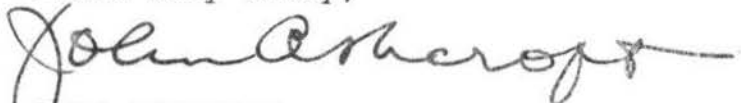
It appears, therefore, that if at the time of the extension of the city limits Crystal City was not located in a first class county, the automatic extension of the school district boundary lines is effected, and the fact that Crystal City has become located in a first class county prior to the effective date of the change does not prevent the change from taking place.

#### CONCLUSION

It is the opinion of this office that the extension of city limits in a second class county automatically extends the school district boundary lines of such city, regardless of the fact that the county becomes a first class county prior to the effective date of the extension.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Sheila K. Hyatt.

Yours very truly,



JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

April 20, 1979

OPINION LETTER NO. 90  
(Answer by Letter-Klaffenbach)

Mr. Gerald H. Goldberg  
Director of Revenue  
Jefferson State Office Building  
Jefferson City, Missouri 65101



Dear Mr. Goldberg:

This letter is in response to your question asking for an interpretation of Section 30(a) of Article IV of the Missouri Constitution, with respect to the distribution of motor fuel tax receipts.

We believe that the language of Article IV, Section 30(a) sub. 1(1), sets forth explicitly the factors to be used in determining the distribution of county aid road trust fund moneys. Among other things, one half of the special trust fund is to be distributed to the various counties on the ratio that the rural land valuation of each county bears to the rural land valuation of the entire state, as determined by the last available report of the State Tax Commission. The term "rural land" is defined in this constitutional section as all land located within any county, except land in incorporated villages, towns or cities.

The report of the State Tax Commission referred to in this constitutional section can only be the annual report of the Commission issued pursuant to Section 138.440, RSMo. This report includes a county-by-county breakdown of all

Mr. Gerald H. Goldberg

real property into town lots and farming lands. This breakdown stems from the State Tax Commission's obligation under Section 138.390, RSMo, to equalize the aggregate valuations between counties and to classify all real estate into two categories: (1) town lots and (2) farming lands. Town lots are defined in this section as all real estate "situated in cities, towns and villages."

We believe that the term "rural land," as used in the Constitution, and the term "farming lands," as used in Section 138.390, are synonymous. Likewise the term "town lots" as used in Section 138.390 can only refer to property lying within the boundaries of an incorporated city, town or village. Therefore, in determining the proper ratios for distribution of the county aid road trust funds to the various counties, the Director of Revenue should use the figures contained in the latest annual report of the State Tax Commission for farming lands.

It is our understanding that, in the past, such funds have been distributed on the basis of reports furnished your department by the various counties and that some such reports are at variance with the figures in the State Tax Commission report. It is also our understanding that the figures furnished by some counties to the State Tax Commission have been in error at least in part. Although the aggregate real estate values submitted to the Commission were apparently correct, the allocation of those values between the categories of farming lands and town lots was based upon an improper standard. However, as we understand it, the distribution of the funds, by your department has been made on the basis of figures furnished your department by the counties and although some such figures are at variance with the figures submitted by the counties to the State Tax Commission they nevertheless appear to be the more nearly correct figures. It seems clear then that although the precise figures which were utilized were not obtained from the State Tax Commission (except most recently) the resulting distribution was based upon a ratio that was probably an equitable ratio in that it apparently more closely conformed to the constitutional requirements.

Therefore, insofar as future action by your department is concerned, it is our view that the State Tax Commission should permit amendments by the counties to be made to their reports filed with the Commission so that the distribution for the calendar year beginning in January, 1979, may be adjusted based upon amended figures made available by a State Tax Commission report to the Department of Revenue. This will of course necessitate a proper



Mr. Gerald H. Goldberg

liaison between the State Tax Commission and the counties to determine which counties have erred in the past in submitting such figures to the State Tax Commission and to receive the required accurate information from such counties. As we indicated, after such amended statistics are obtained from the counties the State Tax Commission should make available to your department an amended report and your department, in our view, should adjust the ratios for this calendar year so that the proper distribution is made.

Insofar as your question relates to what action should be taken concerning any error that may have been involved in the past it is our view that there is no clear showing at this time that there has been any substantial error in the computation of figures used for the distribution of such funds in the past. Although the Department of Revenue has not used State Tax Commission figures, as we indicated, in view of the erroneous figures submitted by certain counties, the use of the State Tax Commission figures would have resulted in an erroneous distribution of such funds. Also as we indicated, there is no clear showing that the figures actually used by the Department of Revenue have been substantially in error although they were furnished by the counties directly to the Department of Revenue contrary to the constitutional mandate.

To summarize, we see no compelling reason to attempt to adjust any figures prior to January, 1979. The State Tax Commission should permit the counties to submit proper amended figures and thereafter the State Tax Commission should make available to the Department of Revenue a report based on such amended figures so that the Department of Revenue will have the last available report of the State Tax Commission which it may use to adjust the distribution of such county aid road trust funds for the 1979 calendar year.

Very truly yours,

JOHN ASHCROFT  
Attorney General

cc: State Tax Commission

SCHOOL:  
TEACHERS:

The phrase "employed in any other school system as a full-time teacher for two or more years . . ." in Section 168.104(5), RSMo 1978, is clear and unambiguous and requires that only teaching experience gained in a school system other than the one in which a teacher is presently employed is the basis for waiving one year of the teacher's probationary period.

August 13, 1979

OPINION NO. 92

Honorable George E. Murray  
State Senator  
Room 433, State Capitol Bldg.  
Jefferson City, Missouri 65101



Dear Senator Murray:

This is in response to your request for an opinion which reads as follows:

"Section 168.104(5) RSMo. provides in part as follows: 'In the case of any probationary teacher who has been employed in any other school system as a full-time teacher for two or more years, the Board of Education shall waive one year of his probationary period;...'

"The question is whether one year of a teacher's probationary period shall or may be waived as noted above if the teacher had been employed as a full-time teacher for two or more years in the current, employing district, and not any 'other' school system.

"Clearly, the statute requires that the school district waive one year of the teacher's required probationary period, if the teacher has had two or more full years of previous teaching experience in another school system. Does interpreting the statute so as to require that the teaching experience be acquired by service in a school district other than the current employing district contravene legislative intent and violate the statute itself? There seems to be no logical or other compelling reason to distinguish between teaching experience in this or another school district. To the contrary, to value teaching experience in another



Honorable George E. Murray

school district more than teaching experience in the employing district would be contrary to the principle inherent to the statute, whereby it requires that almost all of the teaching experience must be acquired in the employ of the school district which grants the teacher permanent status. Does treating teachers with teaching experience within the school district differently from those with teaching experience from any other school district violate the equal protection of the law guaranteed by the United States Constitution?"

Your request further indicates that the following situation prompted your query. Teacher A was a full-time teacher in a school district for a three year period. Thereafter, Teacher A, who was a "probationary teacher," did not teach for five years. At the end of the five year period, Teacher A was reemployed by the same school district. The school district did not grant Teacher A credit for her previous experience in the same school district in determining whether she is eligible for "permanent teacher" status as defined in Section 168.104(4), RSMo 1978. However, if Teacher A had taught in a school district different than the one in which she is presently employed, under Section 168.104(5), RSMo 1978, she would have been given partial credit for that other district experience.

Because we have found no appellate cases from Missouri or from any other jurisdiction which defined the phrase "employed in any other school system as a full-time teacher," we must rely on the rules of statutory construction established by the courts of this state.

The primary rule of statutory construction in this state is to ascertain the intent of the legislature from the language used, to give the effect to that intent, if possible, and to take the words used in the statute in their plain and ordinary meaning. State ex rel. Dravo Corp. v. Spradling, 515 S.W.2d 512 (Mo. 1974). Where the meaning of the statute is clear, and the language used therein is plain and unambiguous, there is no reason for any construction. United Airlines, Inc. v. State Tax Commission, 377 S.W.2d 444 (Mo. banc 1964).

Honorable George E. Murray

In view of these rules of construction established by the courts of Missouri, we find no ambiguity in Section 168.104(5). The word "other," is clear and must be given its ordinary meaning. Bethel v. Sunlight Janitor Service, 551 S.W.2d 616 (Mo. banc 1977).

We agree with your statement that there appears to be no logical reason for distinguishing between teaching experience in the district in which the teacher formerly taught and teaching experience in another district but we are compelled to follow the clear intent of the statute in rendering our opinion. Only the General Assembly can change the statute so as to make such statute applicable both to teaching experience in the district in which the teacher formerly taught and teaching experience in another district.

Your second question asks for our ruling on the constitutionality of this statute. We believe that this office is prohibited from passing on the constitutionality of statutes by Gershman Investment Corporation v. Danforth, 517 S.W.2d 33 (Mo. banc 1974).

#### CONCLUSION

It is, therefore, the opinion of this office that the phrase "employed in any other school system as a full-time teacher for two or more years . . ." in Section 168.104(5), RSMo 1978, is clear and unambiguous and requires that only teaching experience gained in a school system other than the one in which a teacher is presently employed is the basis for waiving one year of the teacher's probationary period.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Edward D. Robertson, Jr.

Sincerely,

JOHN ASHCROFT  
Attorney General

May 21, 1979

OPINION LETTER NO. 93  
(Answer by Letter-Klaffenbach)

The Honorable John T. Russell  
Senator, District No. 33  
Room 419B, Capitol Building  
Jefferson City, Missouri 65101



Dear Senator Russell:

This letter is in response to your question asking for an interpretation of the statutes governing the payment of mileage to sheriffs in third class counties.

We understand from the prosecuting attorney of Dade County that the precise question is whether the sheriff of Dade County, who lives in Dadeville, which is approximately twelve miles from Greenfield, the county seat, is entitled to mileage reimbursement for the mileage actually traveled by him from his home to the sheriff's office in Greenfield. Apparently the county court has taken the position that payment for such mileage is not proper. However, the sheriff believes that since his radio is on and he is on the alert to investigate a crime or a traffic accident, such mileage is actual and necessary and, therefore, reimbursable under Section 57.430, RSMo 1975 Supp.

Section 57.430 authorizes an allowance only for actual expenses not in excess of fifteen cents per mile, within the maximum provided, for the investigation "of persons accused of or convicted of a criminal offense." Neither that section nor any other that we are able to find authorizes payment for mileage on the basis that the sheriff in a third class county is on an alert. We conclude that there is no authority to pay such mileage for travel to Greenfield.

Sincerely,

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

(314) 751-3321

65101

July 27, 1979

OPINION LETTER NO. 94

The Honorable James C. Kirkpatrick  
Secretary of State  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Kirkpatrick:

This letter is to acknowledge receipt of your request for an opinion from this office in which you have presented the following question:

"Can land patents now be issued for section sixteen school lands which should have been patented when they were sold, but were not?"

In Attorney General's Opinion Letter No. 89, Kirkpatrick, 2-18-69, it was pointed out that Sections 166.130 and 166.140, RSMo 1959, provided the procedure to be followed by the Secretary of State of Missouri in issuing patents to the purchasers of school lands upon receipt of a statement showing payment of the purchase price. However, it was stated that Chapter 166, RSMo 1959, had been repealed and that no new sections had been enacted with the same or similar provisions of former Sections 166.130 and 166.140, RSMo 1959. Therefore, it was concluded that in the absence of any present Missouri statutes providing what he should do, the Secretary of State was unauthorized to issue patents to the purchasers of school lands (copy of opinion attached).

The present statutory provisions relating to the conveyance of section sixteen school lands are found in Sections 177.061 and 177.071, RSMo 1978, and read as follows:

The Honorable James C. Kirkpatrick

Section 177.061 provides:

"1. Any of the sixteenth-sections of land, or lands selected in lieu thereof, granted to the state of Missouri by acts of congress for the support of schools in congressional townships may be sold and conveyed by the school district for whose benefit the land is held in the manner provided by law for the sale of property owned by the school district and no longer required for school purposes. The deed of conveyance shall be executed by the president of the school board of the district, signed by him and attested by the clerk or secretary of the board. If the district has a seal the seal shall be affixed to the deed.

"2. Any conveyance of the land made by a school board in accordance with this section shall divest the state of Missouri of all title to the land, and vest title in the grantees, their heirs and assigns, forever.

"3. The proceeds derived from the sale of the sixteenth-section school lands shall be placed to the credit of the building fund of the district.

"4. This section does not affect conveyances of sixteenth-section school lands made under prior laws."

Section 177.071 provides:

"All sales of land in sections numbered sixteen, or lands selected in lieu thereof, by any sheriff, in the attempt to carry out the provisions of any statute relating to

The Honorable James C. Kirkpatrick

the sale of the lands as school lands for the townships in which they lie, which sales took place more than ten years before October 13, 1963, shall, upon the expiration of two years from October 13, 1963, become and be deemed valid and effectual for all intents and purposes, and the title thereto sought to be conveyed is hereby confirmed in the respective purchasers and those claiming under them at the expiration of the two years, whether there was any petition from the holders of the townships for the sales or not, and notwithstanding any other errors, defects, omissions or imperfections in the petition, order of sale, notice, sale, or other proceeding therein; save only as to such lands now involved or which during the period of two years may become involved in any suit because thereof, as to which lands this section shall not take effect until the final determination of the suit."

A review of the above statutory provisions does not reveal any authority of the Secretary of State to issue land patents for section sixteen school lands. The only other statutory provision relating to the authority of the Secretary of State concerning land patents is Section 446.180, RSMo 1978, which provides for authority to make corrections to existing patents under certain circumstances. However, this is not the factual situation that has been presented. As a result, it is our view that the reasoning of Attorney General's Opinion Letter No. 89 is still correct and is applicable to the question under consideration.

It is therefore our view that under the present Missouri statutes, the Secretary of State of Missouri is not authorized to issue a land patent for section sixteen school lands, but only has authority to make a correction to an existing land

The Honorable James C. Kirkpatrick

patent for section sixteen school lands in accordance with  
the provisions of Section 446.180, RSMo 1978.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft". The signature is written in dark ink and is positioned below the typed name.

JOHN ASHCROFT  
Attorney General

Enclosure  
Op. Ltr No. 89



*Attorney General of Missouri*

JEFFERSON CITY

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

65101

March 27, 1979

OPINION LETTER NO. 95

Answer by Letter - Klaffenbach

Honorable James Mathewson  
Representative, District 113  
Room 407, Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Mathewson:

This letter is in answer to your question asking:

"The question is in regard to Article 6, Section 27 of the Missouri Constitution as it pertains to industrial revenue bond elections.

"Question: What percentage is needed for a vote of 'a majority of the qualified electors' as stated on the second line of Section 27 (50%, 2/3rds majority, 4/7ths majority)?"

Section 27, Article VI of the Constitution of Missouri, provides in part as follows:

"Any city or incorporated town or village in this state, by vote of a majority of the qualified electors thereof voting thereon, . . . may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, construction, extending or improving any of the following: . . .  
(2) plants to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing and industrial development purposes, including the real estate, buildings, fixtures and machinery; . . ." (Emphasis ours)

Honorable James Mathewson

In Himmel v. Leimkuehler, 329 S.W.2d 264, 270 (St.L.Ct.App. 1959), the court stated:

" . . . A majority, Webster's New International Dictionary, Second Edition, tells us, is 'the greater of two numbers that are regarded as parts of a whole or total; the number greater than half; more than half of any total \* \* \*'  
 . . . "

Therefore, the vote required is the vote of any number greater than half of the qualified electors voting thereon.

Very truly yours,

JOHN ASHCROFT  
Attorney General

BONDS:  
SHERIFFS:

A county court, of a third class county, may not expend public funds to reimburse a bonding company for payments made on a sheriff's official bond.

OPINION NO. 97

August 28, 1979

Mr. W. Dean Million  
Prosecuting Attorney  
Butler County  
P.O. Box 518  
Poplar Bluff, Missouri 63901



Dear Mr. Million:

This will acknowledge receipt of your request for an opinion in which you ask concerning the County Court of Butler County, a third class county, as follows:

"If, in the course of carrying out his official duties, a county sheriff is sued on his bond and incurs financial liability to the bonding company as the result of a judgment rendered against him in a lawsuit, can the County Court expend public funds to reimburse the bonding company when the County Court has paid the premium for the bond and has procured the bond? May the County Court be required to expend said funds for said expenses?"

It is well established in this state that county courts are not general agents of the county, but are courts of limited jurisdiction, and outside of the management of fiscal affairs of the county, they possess only such authority as may be prescribed by statute. In Lancaster v. County of Atchison, 180 S.W.2d 706, 708, 352 Mo. 1039 (banc 1934), the court said:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' Sturgeon v. Hampton, 88 Mo. 203, loc. cit. 213. Quoted with approval in the case of Morris et al. v. Karr et al., 342 Mo. 179, 114 S.W.2d 962, loc. cit. 964."

Mr. W. Dean Million

See also State ex rel. Chadwick Consolidated School District v. Jackson, 84 S.W.2d 988, 229 Mo.App. 842 (Spr. 1935), and State ex rel. Moser v. Montgomery, 186 S.W.2d 553 (K.C.Ct.App. 1945).

Also, the courts in this state have unanimously held that public officers are only entitled to such fees and compensation for performing official duties as may be provided by statute. In Nodaway County v. Kidder, 129 S.W.2d 857, 860, 344 Mo. 795 (1939), the court, in so holding stated:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. . . .

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 534; State ex rel. Linn county v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

Also see, Ward v. Christian County, 111 S.W.2d 182, 341 Mo. 1115 (1937).

Furthermore, there is a specific constitutional inhibition against county courts appropriating public funds to any individual or for private purposes. Section 23, Article VI, Constitution of Missouri, reads:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

Section 25, Article VI, Constitution of Missouri, reads:

"No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation except as provided in Article VI, Section 23(a) and

Mr. W. Dean Million

except that the general assembly may authorize any county, city or other political corporation or subdivision to provide for the retirement or pensioning of its officers and employees and the widows and children of deceased officers and employees and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services and to their beneficiaries or estates; and except, also, that any county of the first class is authorized to provide for the creation and establishment of death benefits, pension and retirement plans for all its salaried employees, and the widows and minor children of such deceased employees."

In Hooper v. Ely, 46 Mo. 505 (1870), the court, in discussing an attempted payment by the county court to sureties who expended money to bring back a sheriff and collector who had defaulted and absconded from the county, stated:

"The County Court, it is true, is authorized to audit and direct the payment of claims against the county; but they must be lawful claims. To allow any other, clearly transcends its powers, and its payment can be enjoined. The power to control and manage the real and personal property of the county must, it is true, involve the possession of a large discretion in such control and management. The exercise of that discretion may be wise or unwise, expenditures may be prudent or extravagant, yet so long as the court keeps within its authority, the warrants upon the treasury which it orders must be met. The Circuit Court can not control the exercise of a discretion vested by law in the county judges; and if, as in the case at bar, they are authorized to employ and pay sureties upon the official bonds of public officers, to bring back their absconding principals, or possess any general authority that would include that power, the particular mode of its exercise can not be questioned. But I am unable to see under what heads such a grant of power can be classed. . . .

Mr. W. Dean Million

\* \* \*

"The whole record plainly shows that the allowance was a mere contrivance to lessen the liability of the bondsmen, and, as the County Court could not abate it directly, this indirection does not validate their action." Id. at 507-508.

We conclude that the county court has no authority to reimburse a surety for money expended in payment of a judgment against the sheriff of a county.

#### CONCLUSION

It is the opinion of this office that a county court, of a third class county, may not expend public funds to reimburse a bonding company for payments made on a sheriff's official bond.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Kristie Green.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

COURTS: The county court is not required to expend  
CIRCUIT COURTS: county funds for the salary of a clerk for  
COMPENSATION: the associate circuit judge where there is no  
COUNTY COURT: demonstrated factual need for such additional  
clerk to be paid at the cost of the county.

July 10, 1979

OPINION NO. 99

The Honorable John M. O'Bannon  
Prosecuting Attorney  
Bates County Courthouse  
Butler, Missouri 64730



Dear Mr. O'Bannon:

This opinion is in response to your question asking whether the county court is required to pay funds purportedly budgeted for the salary of a clerk of the associate circuit judge.

Section 483.243, RSMo, which terminates June 30, 1981, provides in part:

"1. The judge of each division of the circuit court which on January 2, 1979, replaced a magistrate court judgeship shall, except in the city of St. Louis, appoint and fix the salary of the chief division clerk for his division and may appoint and fix the salaries of such other division clerks as may be necessary for the proper dispatch of the business of his division. The total salaries of the chief division clerk and the other division clerks for the division paid by the state shall in no event exceed the annual amount fixed in this subsection 1 for division clerk hire for the division; provided, that in any county where need exists, the county court is hereby authorized at the cost of the county, to provide such additional division clerks as may be required for the division and to provide funds for the payment of salaries



The Honorable John M. O'Bannon

or parts of salaries of such division clerks in addition to the amounts payable by the state. The total amount to be paid by the state in any one year for such division clerks of such divisions of the circuit court in the different counties or the city of St. Louis shall not exceed the following sums:

. . . ."

It appears clear from Section 483.243 that although an associate circuit judge has authority to "appoint and fix the salaries of the chief division clerk for his division and may appoint and fix the salaries of other such division clerks as may be necessary for the proper dispatch of the business of his division," such authority is limited to expenditures prescribed in the respective category within which such a county falls. That is, Section 483.243 relates generally to the maximum amounts to be paid by the state in any one year for such division clerks according to the classifications set out, which we have not repeated here. However, the proviso contained in Section 483.243 with respect to additional clerks to be paid at the cost of the county clearly provides that "in any county where need exists, the county court is hereby authorized, at the cost of the county, to provide such additional division clerks as may be required for the division and to provide funds for the payment of salaries or parts of salaries of such division clerks in addition to the amounts payable by the state."

In the circumstances you present, we do not believe that it is necessary to attempt to determine what the Supreme Court of Missouri would hold if a factual need was demonstrated for additional clerks to be paid for by the county. Here apparently no such factual need has been demonstrated. In this respect see State ex rel. Judges, Etc. v. City of St. Louis, 494 S.W.2d 39 (Mo.Banc 1973).

We conclude that the county court is not required to pay such funds for such clerical salary in these premises. We do not speculate as to whether there is actual need or whether such need can be proven.

The Honorable John M. O'Bannon

CONCLUSION

The county court is not required to expend county funds for the salary of a clerk for the associate circuit judge where there is no demonstrated factual need for such additional clerk to be paid at the cost of the county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", followed by a horizontal line extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

JOHN ASHCROFT  
ATTORNEY GENERAL

65102

(314) 751-3321

December 19, 1979

OPINION LETTER NO. 100  
(Answer by Letter - Marshall)

Honorable James F. Antonio  
State Auditor  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Antonio:

This letter is in response to your request for an official Attorney General's opinion. We have not taken into consideration the language of House Bill No. 583, 80th General Assembly, because it operates prospectively only and therefore would have no bearing on the questions that you pose to us as applied to the counties of Saline, Lafayette, Johnson and St. Charles.

I understand your question to be as follows:

What is the present county classification of Saline, Lafayette, Johnson and St. Charles Counties, and what date did each county attain its present classification?

As you know, pursuant to Section 48.040, RSMo 1978, the state auditor is required to ascertain if any county has changed classification and if so to notify the appropriate elected county officials of such status change.

Section 48.020, RSMo 1978, provides in part as follows:

Class 1. All counties having an assessed valuation of four hundred million dollars and over shall automatically be in the first class after that county has maintained such valuation for the time period required by section 48.030. All counties having an assessed valuation of

Honorable James F. Antonio

three hundred million dollars and over shall be in the first class after that county has maintained such valuation for the time period required by section 48.030, unless a majority of the qualified electors of the county voting at an election held for that purpose elect to remain in the second class until the county achieves an assessed valuation of four hundred million dollars for the specified time period.

It is our understanding that your office determined that St. Charles County had attained the assessed valuation of three hundred million dollars and had maintained that assessed valuation for a period of three years as called for by Section 48.030, RSMo 1978. Accordingly, by letter dated February 7, 1978, you notified the appropriate elected officials that unless an election was held pursuant to Section 48.020, cited above, St. Charles County would automatically become a first class county January 1, 1979. It is our understanding that no election was held by the residents of St. Charles County pursuant to the aforesaid section and accordingly it attained a status of first class county effective January 1, 1979.

Section 48.020, RSMo 1978, provides in part:

Class 2. All counties having an assessed valuation of one hundred twenty-five million dollars and less than the assessed valuation necessary for that county to be in the first class shall automatically be in the second class after that county has maintained such valuation for the time period required by section 48.030. All counties having an assessed valuation of seventy million dollars and over shall be in the second class after that county has maintained such valuation for the time period required by section 48.030, unless a majority of the qualified electors of the county voting at an election held for that purpose elect to remain in the third class until the county achieves an assessed valuation of one hundred twenty-five million dollars for the specified time period.

It is our understanding that by letter dated February 7, 1978, you notified the appropriate elected officials of Saline, Lafayette and Johnson Counties that their respective counties had attained an assessed valuation of seventy million dollars and had maintained said assessed valuation for a period of five years and therefore effective January 1, 1979, would become counties of the second class unless a vote was held pursuant to the aforesaid section. It is our further understanding that at the general election on November 6, 1978, an election was held in each of the three counties

referred to and in each case the voters of said counties voted to remain a third class county in spite of having attained the assessed valuation of seventy million dollars.

Thus, the principal question to be answered is whether the county classification status of Saline, Lafayette, Johnson and St. Charles Counties is in any way affected by the decision of the Missouri Supreme Court rendered in Russell v. Callaway County, 575 S.W.2d 193, 199 (Mo. 1978). The pertinent part of the court's decision as it applies to the question you have presented is as follows:

We thus conclude that § 48.020.2 is unconstitutional because it provides for the creation of a fifth and sixth classification of counties, that is, those counties, like Callaway, which despite an assessed valuation of between seventy and one hundred twenty-five million dollars remain in the third rather than move to the second class because of a vote of the electorate, and these counties, like Jefferson, which despite an assessed valuation of between three hundred and four hundred million remain in the second rather than move to the first class because of a vote of the electorate, in violation of Mo. Const. art. VI, § 8.

The elections held pursuant to § 48.020.2, on November 7, 1978, are nullities and should not have been held. Callaway County will become a second class county on January 1, 1979, and Jefferson County will become a first class county on January 1, 1979.

In reaching this decision the court relied upon a previous decision in Chaffin v. County of Christian, 359 S.W.2d 730 (Mo. Banc 1962), in which a unanimous Supreme Court made a similar ruling. The only distinction between the statute in Chaffin, supra, and the statute in Russell, supra, is that the Chaffin statute made the election mandatory whereas the Russell statute made the election discretionary. However, the court in Russell, supra, made it very clear in its decision that such distinction was insignificant because the law as reflected by the statutes ultimately made the determination whether a classification was changed.

An analysis of the unanimous Supreme Court decision in Russell, supra, contains no evidence of any language by the court holding that the seventy million dollar assessed valuation was no longer applicable and enforceable. On the contrary, the clear language of the court as set out above establishes that the only thing declared unconstitutional by the court in Russell, supra, was the requirement for the election as specifically set out in Section 48.020.2.

Honorable James F. Antonio

Accordingly, since your office has determined that St. Charles County has attained an assessed valuation of three hundred million dollars and maintained that assessed valuation for the period required under Section 48.030, it is the opinion of this office that St. Charles County is a first class county and attained that status on January 1, 1979.

In addition, since your office has determined that the assessed valuation of Saline, Lafayette and Johnson Counties individually has reached seventy million dollars and that assessed valuation has been maintained for the period required under Section 48.030, then each of the three counties of Saline, Lafayette and Johnson is now a county of the second class and attained that classification effective January 1, 1979.

Respectfully,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

SCHOOLS:

In determining the annual adjustment provided for in § 163.031.5, all districts in the lowest 5% should be included in the computation, without regard to whether they experience an increase or decrease in the amount per eligible pupil from the preceding year.

July 18, 1979

OPINION NO. 101

Dr. Arthur L. Mallory  
Commissioner  
Department of Elementary and  
Secondary Education  
P. O. Box 480  
Jefferson City, Missouri 65102

Dear Dr. Mallory:

This opinion is issued in response to your request for a ruling on the following question:

"In making the annual adjustment provided for in Section 163.031(5), RSMo, Supp. 1978, should all districts in the lowest five percent, including those with a lesser amount per eligible pupil, as well as those with a greater amount per eligible pupil for the preceding year be used in computing the annual adjustment or should only those districts in the lowest five percent with an increase in the amount per eligible pupil for the preceding year be included in the computation?"

Section 163.031.5 provides:

"5. (1) During the 1977-78 school year, no school district shall receive less per pupil in average daily attendance than it was apportioned during the 1976-77 school year under the provisions of subsections 1, 2, 4, 6, and 7 of section 163.031, RSMo Supp. 1976. In 1978-79 and each year thereafter for five years, those districts which would, under subsections 1, 2, and 3 of this section, be entitled to a smaller amount



Dr. Arthur L. Mallory

per eligible pupil than was received the preceding year shall receive a reduced amount per eligible pupil. Such reduction shall be twenty percent of the difference per eligible pupil between the entitlement under subsections 1, 2, and 3 and the amount per eligible pupil received under subsections 1, 2, 4, 6, and 7 of section 163.031. RSMo Supp. 1976, during the 1976-77 school year but in no instance shall a district receive less than the entitlement under subsections 1, 2, and 3, or \$283 per eligible pupil, whichever is greater. The \$283 base figure shall be multiplied annually by the same percent that the appropriation of state funds for the school foundation program is changed from the previous year and the product added to the amount per eligible pupil apportioned the previous year under this section. However, at no time shall the percent of this annual adjustment exceed the percent of annual adjustment for the mean average of the lowest five percent of the districts which receive an apportionment based upon subsections 1, 2, 3 and 4 of section 163.031."

This subsection, commonly known as a "grandfather" section, constitutes a part of the school foundation formula which underwent major revision in the 79th General Assembly. The purpose of the formula revision was to better equalize the amount of state aid distributed to school districts in relation to the wealth of the district. The purpose of subsection 5 of § 163.031, as with grandfather clauses in general, is to provide some protection to those school districts which would be subject to a reduction in state aid as a result of the new formula. (Those districts which do not receive their apportionment under the grandfather clause are hereinafter referred to as districts "under the formula," i.e., under § 163.031, subsections 1, 2, 3, and 4.)

Basically, subsection 5 provides that during the first school year in which the new statute would operate (1977-78) no district would receive less money per pupil than it was apportioned in 1976-77 (the "base year"). In 1978-79, and for the next five years these "grandfathered" districts would be subject to state aid reduction, but that reduction is to be limited to 20% of the difference between the amount it would receive under the new formula and the amount it received in the base year under the "old" formula (subsections 1, 2, 4, 6, and 7 of § 163.031, RSMo Supp. 1976).

Dr. Arthur L. Mallory

Even this reduction, however, is cushioned: a school district would still be entitled to whatever it would receive under the new formula, or \$283.00 per pupil, whichever is greater.

Subsection 5 goes on to provide for an annual adjustment to the \$283.00 per pupil base figure. Ultimately that adjustment is not to exceed the "percent of annual adjustment for the mean average of the lowest five percent of the districts" which receive apportionments under the formula.

In order to determine the maximum annual adjustment to the \$283.00 base figure for the 1979-80 school year, three steps are necessary. First, the "lowest five percent" of districts under the formula must be identified; second, the percent of change between their 1978-79 apportionment per pupil and their 1979-80 apportionment per pupil must be determined; and third, the "mean average" of these changes expressed in percent must be calculated.

The "lowest five percent" of districts on the formula are identified as those receiving the least amount of state aid per eligible pupil in 1978-79. Identifying these districts presents no problem, except as discussed below.

The next step is to determine the "percent of annual adjustment" of these districts, i.e., the amount by which their apportionment per pupil changed from 1978-79 to 1979-80 expressed as a percent. Because of changes in enrollment, local levies or other factors affecting apportionments under the formula, some of these districts will experience decreases and some will experience increases in their per pupil apportionment between the two years. Your question asks whether those districts for which state aid is reduced (have a negative adjustment) should be included in the lowest five percent. You have provided some figures demonstrating the effect of including the negative adjustment districts. Using last year's figures as examples, Table I presents percentages of annual adjustment between 1977-78 and 1978-79 for school districts which received the lowest amount of state aid per eligible pupil in 1978-79 and includes those districts experiencing a negative adjustment between 1977-78 and 1978-79. Table II presents percentages of annual adjustment for 5% of school districts which received low amounts of state aid per eligible pupil but excludes those districts experiencing negative adjustments between 1977-78 and 1978-79.

Table I  
Low 5% of Districts  
on Formula  
(+ and -)

-10.56%

Table II  
Low 5% of Districts  
on Formula  
(+ only)

+ .55%

Dr. Arthur L. Mallory

- 6.03	.60
- 3.54	.60
- 2.47	.70
- 2.47	.90
- 1.58	.97
- 1.34	1.94
<hr/>	
+ .55	1.97
.60	2.14
.60	2.35
.70	2.74
.90	3.47
.97	3.56
1.94	3.67
1.97	3.75
2.14	3.87
2.35	3.89
2.74	4.07
3.47	4.38
3.56	4.64
3.67	4.79
3.75	4.86
3.87	4.91
3.89	4.99
4.07	5.09
<hr/>	
Average + .55%	Average +3.02%

When the average percent adjustment from Table I is applied to the \$283.00 base figure, that figure becomes \$284.56 per pupil. Using the average percent adjustment from Table II results in a \$291.55 base figure.

For the following reasons, we believe that the method of calculating the average annual adjustment used in Table I is the appropriate method. In the first place, the language of the statute refers plainly to "the lowest five percent of the districts which receive an apportionment" under the formula. Using only those districts in the lowest 5% which experience positive adjustments reads a factor into the term "lowest" which does not appear in the language of the statute.

Secondly, the language of the statute refers to the "percent of annual adjustment" for the lowest 5% of school districts. An "adjustment," according to dictionary definition, is merely a change; the word does not reflect any qualitative aspects. In the context of numerical changes, an adjustment may be positive or negative, or may reflect an increase or decrease. If the General Assembly had not intended the negative adjustment school districts to be included, they would more likely have used the phrase "percent of annual increase" for the mean average of the lowest five percent of the school

Dr. Arthur L. Mallory

districts." By using the word "adjustment," the General Assembly expressed no intention to exclude negative change school districts from the computation.

A court will not alter the plain, ordinary, and natural meaning of words used in a statute. Bethel v. Sunlight Janitor Service, 551 S.W.2d 616 (Mo.Banc 1977). What the legislature intended must be concluded from the language it used. Bradley v. Elsberry Drainage District, 425 S.W.2d 950 (Mo. 1968). Reading the statute as a whole, we find no other indicia of legislative intent pointing toward a result different from that reached above. We presume that the General Assembly recognized that some school districts on the formula might experience decreases in per pupil state aid from year to year, and that some of those school districts might be among the lowest 5%. Nothing in the statute evidences any legislative intent to offset or ignore this fact in computing the minimum entitlements for grandfather districts.

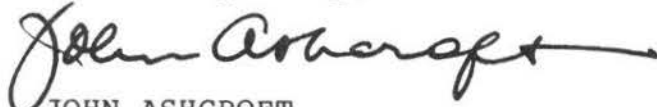
In sum, the language of the statute provides no support for excluding any school district which in fact is among the lowest 5% on the ground that it experiences a reduction in state aid as its annual adjustment. To hold otherwise would read into the statute a factor which simply does not appear.

#### CONCLUSION

Based on the foregoing, it is the opinion of this office that in determining the annual adjustment provided for in § 163.031.5, all districts in the lowest 5% should be included in the computation, without regard to whether they experience an increase or decrease in the amount per eligible pupil from the preceding year.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Sheila K. Hyatt.

Yours very truly,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

SCHOOLS: Permanent teachers promoted to positions  
TEACHERS: of curriculum coordinator or departmental  
chairperson retain their tenure as permanent  
teachers while they hold the curriculum  
consultant or departmental chairperson positions, as long as their  
primary duties remain teaching. Permanent teachers promoted to  
positions which are supervisory in nature lose their tenure while  
employed in the supervisory position and may regain their tenure  
only after they are reemployed as teachers in the same school dis-  
trict for two consecutive years.

August 9, 1979

OPINION NO. 103

Honorable James Russell  
Representative, District 58  
Room 314, State Capitol Bldg.  
Jefferson City, Missouri 65101

Dear Representative Russell:

This is in response to your request for an opinion which  
reads as follows:

"(1) Do certified teachers who are  
now employed in various administrative and  
supervisory positions other than in posi-  
tions of principal and assistant principal  
and who have achieved tenure status in the  
district prior to and at the time of assuming  
the administrative or supervisory position re-  
tain his or her status as a tenure teacher with  
the school district:

"(a) While employed in the adminis-  
trative or supervisory position at the present  
time; and

"(b) after the teacher leaves the ad-  
ministrative or supervisory position and re-  
turns to teaching;

"(c) if the teacher resigns or is re-  
moved from such nonteaching position.

"(2) If a permanent teacher of a six  
director school district accepts a non-teaching  
supervisory, administrative or curriculum con-  
sultant position with the school district, other



Honorable James Russell

than as principal or assistant principal, does he or she retain the right to continued employment with the school district as a permanent teacher if he or she thereafter resigns from or is removed from such non-teaching positions?"

You indicate that the various administrative and supervisory positions in which certified teachers are employed include assistant superintendent, business director, assistant to the superintendent and activities director. These positions involve non-teaching duties, but each person holding such position was, prior to accepting the supervisory position, a permanent teacher as defined in Section 168.104(4), RSMo 1978.

Further, you indicate that a second class of persons exists who are designated curriculum consultants and department chairpersons. These persons teach a portion of each day and perform administrative duties the remaining portion of each day. Each of these consultants and chairpersons achieved tenure prior to becoming a consultant or chairperson. For purposes of this opinion, we shall divide the administrative personnel described into two separate categories--those whose functions include primarily teaching duties and those whose positions are entirely administrative.

Section 168.104(4), RSMo, defines "permanent teacher" and establishes the requirements for the achievement of tenure by Missouri teachers.

"'Permanent teacher', any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a full-time teacher by the school district; except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract. Any permanent teacher who is promoted with his consent to a position of principal or assistant principal, or is first employed by a district as a principal or assistant principal, shall not have permanent status

Honorable James Russell

in such position but shall retain tenure in the position previously held within the district, or, after serving two years as principal or assistant principal, shall have tenure as a permanent teacher of that system;"

Further, Section 168.104(7), RSMo, defines "teacher" as:

"'Teacher', any employee of a school district, except a metropolitan school district, regularly required to be certified under laws relating to the certification of teachers, except superintendents, assistant superintendents, and any other persons regularly performing supervisory functions as their primary duty."

Thus, with regard to persons who become curriculum coordinators or departmental chairpersons, the statute is clear. As long as they are not ". . . regularly performing supervisory functions as their primary duty," they remain "teachers" (Section 168.104(7), RSMo) and retain tenure as "permanent teachers."

Common sense dictates this result. If we were to allow boards of education to promote teachers to positions of curriculum coordinator or departmental chairperson where their duties remain primarily teaching, and as a result of the promotions remove the protection these teachers tenure affords, we would sanction a circumvention of the desirable policies which prompted the passage of the Teacher Tenure Act. The Supreme Court of Wisconsin recognized this danger in State ex rel. Karnes v. Board of Regents of Normal Schools, 269 N.W. 284 (Wisc. 1936), when it held:

"If we should hold that the board may assign a permanent teacher to a certain named position in which his principal occupation is that of teaching, and then by subsequent action abolish the position, . . . and thereby effect his discharge, then indeed would [the Wisconsin Teacher Tenure Act] be emasculated and permanent teachers in the system would hereafter have to be wary of the names and titles given to their respective teaching positions. . . ." Id. at 288.



Honorable James Russell

It is, therefore, our opinion that permanent teachers who accept curriculum consultant or department chairperson positions and whose primary duties remain teaching, retain their tenure while they hold the curriculum consultant or departmental chairperson position.

With regard to teachers who accept supervisory positions, the statute is clear that a person whose primary functions are supervisory is not a teacher (Section 168.104(7)). It follows that one who is not a teacher cannot be a permanent teacher. Thus, a permanent teacher loses tenure when he accepts a supervisory position, and is without protection of the tenure statute as long as he remains in that supervisory position.

The answer to your final question, whether a person who is removed or resigns from a supervisory position retains tenure, is more difficultly reached. Section 168.104(4), contains a tenure-saving provision by which a permanent teacher whose service to the district as a permanent teacher is interrupted can regain tenure.

" . . . except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract. . . ."

On its face, the statute is ambiguous; the verb "resigns" is without an object. Since the section in question addresses employment "as a teacher," it is our opinion that the proper object for the verb "resigns" is "as a teacher." As we interpret it, the statute should read, "except that, when a permanent teacher resigns as a teacher . . ." Thus, in order to come under the tenure-saving provisions of § 168.104(4), a permanent teacher must resign from teaching.

Webster's New World Dictionary defines "resign" as follows:  
"2. to give up (an office, position, etc.) . . . ." In applying this definition to the facts you supplied, it is our opinion that when a permanent teacher, under an indefinite contract with a board of education, accepts that board of education's offer to

Honorable James Russell

leave teaching and assume a nonteaching, supervisory role, he has constructively resigned from his position as a permanent teacher by his acceptance of the board of education's offer. See Rieke v. Hogan, 32 N.E.2d 9, 10 (Ohio 1941).

We believe that our interpretation is in accord with the purposes of the Teacher Tenure Act<sup>1</sup> and the canons of statutory construction formulated by Missouri courts<sup>2</sup>.

Thus, because the supervisor has resigned from his permanent teaching position, the tenure-saving provisions of Section 168.104(4), are applicable; if he returns to teaching in the same district, his first year's contract is not indefinite, but if he is reemployed for a second, consecutive year, the contract is indefinite and he has regained tenure.

#### CONCLUSION

It is therefore, our opinion, that permanent teachers promoted to positions of curriculum coordinator or departmental chairperson retain their tenure as permanent teachers while they hold the curriculum consultant or departmental chairperson positions, as long as their primary duties remain teaching. It is further our opinion that permanent teachers promoted to positions which are supervisory in nature lose their tenure while employed in the supervisory position and may regain their tenure only after they are reemployed as teachers in the same school district for two consecutive years.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Edward D. Robertson, Jr.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

## NOTES

1. Lopez v. Vance, 509 S.W.2d 197, 202 (Mo.Ct.App. at St.L. 1974), stated the purpose of the Teacher Tenure Act as follows: ". . . We believe the purpose of our statute, as well as teacher tenure acts, was to attain stability, certainty and permanence of employment on the part of those who have shown by educational attainment and by a probationary period their fitness for the important profession of teaching. 'The history behind the act justifies the view that the vicissitudes to which teachers had in the past been subjected were to be done away with or at least minimized. It was enacted for the benefit and advantage of the school system by providing such machinery as would tend to minimize the part that malice, political, or partisan trends, or caprice might play. It established merit as the essential basis for the right of permanent employment.' [citations omitted]." [Emphasis the court's.]

2. The rules of statutory construction formulated by the courts of this state require that the goal of construction of a statute is to determine the intent of the legislature, Person v. Scullin Steel Co., 523 S.W.2d 801 (Mo. banc 1975) and State ex rel. Zoological Park Subdistrict of City and Co. of St. Louis v. Jordan, 521 S.W.2d 369 (Mo. 1975); that statute must be construed as a whole, State ex rel. Safety Ambulance Service, Inc. v. Kinder, 557 S.W.2d 242 (Mo. banc 1977) and State ex rel. Fee Fee Trunk Sewer, Inc. v. Public Service Commission of Missouri, 522 S.W.2d 67 (Mo.Ct.App. at K.C. 1975); that where ambiguities exist, the statute must be given a liberal construction which avoids an absurd result, Chapman v. Sanders, 528 S.W.2d 462 (Mo.Ct.App. at St.L. 1975) and State ex rel. Safety Ambulance Service, Inc. v. Kinder, supra; and that unless contrary definitions are included in the statute, words will be given their ordinary meaning, St. Louis Southwestern Railway Co. v. Loeb, 318 S.W.2d 246 (Mo. banc 1958) and Bethel v. Sunlight Janitor Service, 551 S.W.2d 616 (Mo. banc 1977).



## *Attorney General of Missouri*

JEFFERSON CITY

(314) 751-3321

JOHN ASHCROFT  
ATTORNEY GENERAL

65101

June 27, 1979

OPINION LETTER NO. 104

The Honorable Clifford W. Gannon  
Senator, District 22  
State Capitol, Room 330  
Jefferson City, Missouri 65101

Dear Senator Gannon:

This letter is in reference to Opinion Request No. 104, which you submitted to this office.

The opinion request asks whether the change of a county's classification from second class to first class terminates the existence of a sewer district organized under §§ 249.763, et seq., RSMo, and whether § 249.666, RSMo, applies to a sewer district organized under § 249.763, et seq., when such a sewer district existed prior to the revival of the municipal charter and the county in which both sewer district and the city are located has changed its classification from second to first class.

It is our understanding after talking to Mrs. Dorothy Meng of the sewer district and Joseph Cunningham, attorney for the district, that they appear to agree with our view that an opinion of this office should not be issued on this question under these circumstances.

It is our view that after talking to Mr. Cunningham that the question is novel and that there are no exact precedents that we are able to find that would answer the question, and in view of the serious consequences that would follow if the law is not correctly interpreted, it would be unwise to attempt to answer this question by an Attorney General's opinion. It is our view that the only way to resolve the question so that all parties will be protected is to have some sort of court


The Honorable Clifford W. Gannon

action, perhaps a declaratory judgment, which would inform all the parties, that is, the city and the sewer district and the general public, of their rights and liabilities in the present confused situation due to the fact that the county attained first class status.

I might add that we have discussed this matter with several bond attorneys, and they are of the view that it is a novel question and that there is no exact precedent in this state for making any definitive holding.

Inasmuch as we have not heard from either Mr. Cunningham or Mrs. Meng since our last conversations with them, we assume that they agree with our views and that the opinion is no longer desired. We are, therefore, marking your request withdrawn.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

ccs to:  
Mr. Cunningham  
Mrs. Meng

EXPENSES: Travel expenses reimbursed to Missouri  
COMPENSATION: State Highway Patrolmen under Section  
HIGHWAY PATROL: 43.110, RSMo 1969, do not constitute  
payment of salary under Section 43.070,  
Senate Bill 763, 79th General Assembly, and such reimbursements  
are not in violation of the maximum salary limits established  
in Section 43.070.

May 17, 1979

OPINION NO. 106

Mr. F. M. Wilson, Director  
Department of Public Safety  
P.O. Box 749  
Jefferson City, Missouri 65102

Dear Mr. Wilson:

This is in response to your request for an opinion which  
reads as follows:

"Does the payment of travel expenses, as  
set out in RSMo. Section 43.110, of which  
a part of such reimbursed travel expenses  
has been declared to be income to the offi-  
cer by the Internal Revenue Service, consti-  
tute a payment in violation of Section 43.070  
which fixes maximum salaries of members of  
the Missouri State Highway Patrol? Section  
43.070 is subject to Section 43.080, which  
allows 5-year service salary increases."

It is our understanding that your query was prompted by a  
recent audit of the Missouri State Highway Patrol (MSHP) by the  
state auditor. That audit questioned whether the reimbursements  
made to highway patrolmen for certain travel expenses (which  
have been ruled income for federal income tax purposes) should  
be considered part of the salary paid patrolmen under Section  
43.070, V.A.M.S. (Senate Bill No. 763, Seventy-Ninth General  
Assembly, Second Regular Session).

It is further our understanding that these travel expenses  
are reimbursed only after they have been incurred by a highway  
patrolman and a proper expense account form has been submitted  
for payment. The individual highway patrolman must sign the ex-  
pense account form and thereby attest that the expense was nec-  
essary to the public business of the state.

Mr. F. M. Wilson

In answering the question you pose, we shall concern ourselves with Missouri law exclusively. In so doing, we acknowledge the decisions of the United States Supreme Court in Commissioner v. Kowalski, 434 U.S. 77 (1977), in which cash advances to New Jersey highway patrol officers for meals consumed while on duty were held to be income to the officers under 26 U.S.C., §61(a), and Central Illinois Public Service Co. v. United States, 435 U.S. 21 (1978), which held that although income to the employee, cash meal reimbursements, were not wages subject to withholding as required by 26 U.S.C., §§ 3401-3403. Further, we acknowledge P.L. 95-427 (H.R. 12841), effective October 7, 1978, which, in its effect, applies the Kowalski decision prospectively, and Rev. Proc. 79-13 (1979-10 I.R.B. 27), which implements P.L. 95-427.

In acknowledging these federal decisions and enactments, we intend no interpretation of them. Instead, we turn to Missouri law, and, in rendering the opinion requested, seek to determine the intent of the legislature. State v. Kraus, 530 S.W.2d 684 (Mo. banc 1975); State ex rel. Dravo Corp. v. Spradling, 515 S.W.2d 512 (Mo. banc 1974).

As your question indicates, separate statutory sections exist which establish salary limitations and which authorize reimbursements of certain travel expenses of members of the patrol. Section 43.070, V.A.M.S. (Senate Bill 763, Seventy-Ninth General Assembly, Second Regular Session) states:

"The annual salary of the superintendent shall be twenty-one thousand six hundred dollars. The annual salary of all other members of the Missouri state highway patrol shall be fixed by the superintendent not to exceed nineteen thousand five hundred dollars for the lieutenant colonel, eighteen thousand six hundred dollars for the majors, seventeen thousand seven hundred dollars for the captains and director of radio, sixteen thousand eight hundred dollars for the lieutenants and radio engineers, fifteen thousand nine hundred dollars for the sergeants, fifteen thousand dollars for the corporals, fourteen thousand four hundred dollars for the patrolmen first class and radio personnel, fourteen thousand one hundred dollars for the patrolmen and thirteen thousand eight hundred dollars for probationary patrolmen."



Mr. F. M. Wilson

Section 43.110, RSMo, provides in part:

"The necessary expenses of the members of the patrol in the performance of their duties shall be paid by the state when such members are away from their places of residence or from the district to which they are assigned, subject to the approval of the commission. . . ."

We think the existence of separate statutory provisions is significant. Had the legislature intended to treat reimbursed expenses as salary, a separate statutory section would have been unnecessary.

Generally speaking, the terms "salary" and "expenses" are not treated as synonyms by the courts.

"Public officers are very often allowed statutory compensation for expenses incurred by them in the performance of their official duties. Such allowances for expenses are something different from salary, emoluments, or perquisites, . . ." 63 Am.Jur.2d, Public Officers, §387 (1972).

Although we find no Missouri cases precisely in point, other jurisdictions have addressed similar questions. In In re Interrogatories by the Colorado State Senate, Forty-Sixth General Assembly, 452 P.2d 391 (Colo. banc 1969), the Colorado Supreme Court held that a reimbursement for lodging expenses to state legislators was not part of the salary paid the lawmakers. And in Geyso v. City of Cudahy, 149 N.W.2d 611 (Wisc. 1967), the Wisconsin Supreme Court stated:

"An allowance for expenses incident to the discharge of the duties of office in and of itself is not necessarily an increase in salary. . . ." Id. at 615.

See also Windmiller v. The People of the State of Illinois, 78 Ill.App. 273 (1898), and Taxpayers' League of Carbon County, Wyoming v. McPherson, 54 P.2d 897 (Wyo. 1936).

Mr. F. M. Wilson

It is our opinion that the legislature did not intend the terms "salary" and "expenses" to be treated as synonyms, and therefore, that actual travel expenses reimbursed to highway patrolmen should not be included in calculating the salary paid highway patrolmen.

Because your question finds its genesis in a ruling of the Internal Revenue Service, we make the following observation. A determination by the United States Supreme Court or the Internal Revenue Service that certain reimbursed expenses should be included in the income of highway patrolmen for purposes of federal income taxation does not require the State of Missouri to include those expenses in calculating the statutory salary paid patrolmen. That determination is properly left with the Missouri General Assembly, which has, in our opinion, decided that reimbursed travel expenses paid state highway patrolmen are not part of the salaries paid highway patrolmen under Section 43.070.

#### CONCLUSION

It is, therefore, our opinion that travel expenses reimbursed to Missouri State Highway Patrolmen under Section 43.110, RSMo 1969, do not constitute payment of salary under Section 43.070, Senate Bill 763, Seventy-Ninth General Assembly, and that such reimbursements are not in violation of the maximum salary limits established in Section 43.070.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Edward D. Robertson, Jr.

Sincerely,

A handwritten signature in cursive script, reading "John Ashcroft". The signature is written in dark ink and is positioned above the printed name and title.

JOHN ASHCROFT  
Attorney General

DEPT. OF TRANSPORTATION: Director of the Department of Transportation is subject to the control of  
STATE EMPLOYEES: the Transportation Commission which, under the Missouri Constitution, is vested with the authority to administer the Department of Transportation. The commission has the power to appoint, promote, demote, suspend and dismiss employees of the department.

August 3, 1979

OPINION NO. 107

The Honorable William McBride Love  
Chairman  
Missouri Transportation Commission  
8 Portland Place  
St. Louis, Missouri 63108

Dear Mr. Love:

You have requested an official legal opinion of this office on the following question:

"Does the administration of the Missouri Department of Transportation by the Missouri Transportation Commission necessarily include the exclusive power to appoint, promote, demote, suspend and dismiss all employees of the department?"

We assume you refer to the hiring, firing and other personnel action relating to departmental employees only (excluding the director) and not to employees of the separate agencies and authorities assigned to the department by § 14 of the Omnibus State Reorganization Act.

Article IV, § 32(a), Missouri Constitution, provides:

"The department of transportation shall be administered by a transportation commission. The number, qualifications, compensation and terms of the members of the commission shall be fixed by law, and not more than one-half of its members shall be of the same political party. The selection and removal of all employees shall be without regard to political affiliation. The transportation commission shall have power and authority in regard to matters pertaining to modes and systems of transportation, including airports and rapid transit, as may be provided by law."

The Honorable William McBride Love

Section 14.1, Omnibus State Reorganization Act, Appendix B, RSMo, provides:

"There is hereby created a department of transportation administered by a transportation commission of six members, not more than half of whom shall be members of the same political party, appointed by the governor by and with the advice and consent of the senate. The terms of the members and restrictions on selections shall be as provided for members of the state highway commission. The governor shall appoint a director of the department by and with the advice and consent of the senate, to be the chief administrative officer of the department and shall fix the level of his salary."

It is our view that if § 14.1 of the Omnibus State Reorganization Act was interpreted to put such an appointed director in charge of the Department of Transportation, it would come into conflict with the provisions of the Constitution, above-quoted, which vest the administrative charge of the Department of Transportation in a Transportation Commission. See our Opinion 161-1974, copy enclosed, in which we concluded that the Department of Mental Health, established pursuant to § 37(a) of Article IV of the Missouri Constitution, is under the control of the director of such department notwithstanding the provisions of the Omnibus State Reorganization Act, which purport to vest the control of such department in a State Mental Health Commission. It is our view, however, that such a constitutional conflict does not exist in the present situation.

That is, although various sections of the Omnibus State Reorganization Act purport to give the director of a department certain express powers which are basic to the administration of the department, it is our view that in the type of situation we have here, where the Commission is the constitutional head of the department, any exercise of powers by such a director is subordinate to the control and administration of the department vested in and to be exercised, or delegated in the proper instance, by the Commission.

The Honorable William McBride Love

It also seems clear in the situation presented that the provisions of § 14.1 of the Omnibus State Reorganization Act do not raise a constitutional conflict. The first part of such provisions clearly implement and recognize the constitutional provision placing the administration of the Department of Transportation in the Transportation Commission. The last provision of § 14.1, above, merely authorizes the governor to appoint a director of the department by and with the advice and consent of the senate "to be the chief administrative officer of the department" and to fix his salary. It is doubtful that the legislature by such provision authorizing the appointment of a director of the department intended to create a conflict with the first provision of the same section providing that the Department of Transportation is to be administered by the Transportation Commission. Clearly, such provisions of the same section enacted at the same time must be read together. Clearly also, if possible, a construction should not be given to such provisions which would create a conflict with the provisions of the Constitution. McIntosh v. Haynes, 545 S.W.2d 647 (Mo. Banc 1977).

As we indicated, we are aware of the fact that the director of the department has been given express statutory authority in various areas throughout the Omnibus State Reorganization Act. We are of the view, however, that the Department of Transportation is to be administered by the Transportation Commission and that any of the powers purportedly granted to the director of such department by statute, are subject to abrogation by the Commission and can be exercised by the director subject to the control and the supervision of the Commission. Simply stated, this means that the Commission is the controlling body under the constitutional provision insofar as the administration of the Department of Transportation is concerned. The Commission has the authority to hire and fire such employees of the department. Thus, the Commission is the ultimate authority in that agency and the director must carry out all lawful and proper orders of the Commission relative to the administration of the department.

In writing this opinion we have given some consideration to the interpretation that the Omnibus State Reorganization

The Honorable William McBride Love

Act in this instance provides for the appointment of a department director by the Governor to exercise administrative control of the department. Such an interpretation could create a constitutional conflict because the Constitution gives the Commission the administrative control of the department. However, we have not found it necessary in this opinion to conclude that such statutory provision is repugnant to the constitutional provision because, as we have stated, it is our view that such administrative control of the department by such a director must be exercised subject to the ultimate control of the Commission under the Constitution. It is clear, moreover, that any attempt by the director to usurp the authority which is placed in the Commission by the Constitution would be in direct conflict with the provisions of the Constitution.

#### CONCLUSION

It is the opinion of this office that the Director of the Department of Transportation is subject to the control of the Transportation Commission which, under the Missouri Constitution, is vested with the authority to administer the Department of Transportation. The Commission has the power to appoint, promote, demote, suspend and dismiss employees of the department.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a stylized flourish at the end.

JOHN ASHCROFT  
Attorney General

Enclosure

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

April 24, 1979

OPINION LETTER NO. 108

ANSWERED BY LETTER - KLAFFENBACH

Honorable Charles J. Becker  
State Representative, District 123  
House Post Office  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Becker:

This letter is in response to your question asking the following questions with regard to Section 204.280, as amended in 1978 by House Bill 971 of the 79th General Assembly:

"1. After the change in §204.280, in order to create a common sewer district under Chapter 204, is the election law and procedure in Chapter 115 (specifically §115.121-115.131) the proper procedure to be used?

"2. After the change in §204.280, in order to create a common sewer district under Chapter 204, can a legally binding election be held on August 7, 1979?"

Section 204.280, V.A.M.S., provides:

"1. The circuit court shall by order direct the county court of any county partially within the proposed district to submit to the voters of the proposed district the



Honorable Charles J. Becker

question of the organization and incorporation of the proposed common sewer district, with boundaries as determined by the commissioners and approved by the circuit court.

"2. The county clerk of each county shall certify to the circuit court the results of the election in that portion of the proposed district within his county.

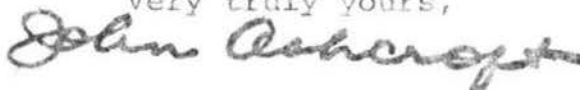
"3. If the circuit court finds that a majority of the votes cast on the question in each county favored the incorporation of the proposed district, the court shall issue a decree incorporating the area described in the commissioners' report as a common sewer district. If the proposition is favored by a majority of those voting in the county containing the major portion of the district but not by a majority voting in the other county, the court shall change the boundaries to include only the area within the one county and shall decree the incorporation thereof.

"4. If the question fails to receive a majority of the votes cast in the county containing the major portion of the proposed district, regardless of the results in the election in the other county, the court shall dismiss the petition and tax the costs of the proceedings and the election against the county which presented the petition."

House Bill 971 made numerous amendments to various sections of the laws so that such sections would conform to the election laws of Chapter 115.

It is our interpretation of Section 204.280 that the circuit court in its order directing the county court to submit the question to the voters concerning the incorporation of the proposed common sewer district will determine the date on which the election is to be held. We assume that the circuit court will make that determination on the basis of the prescribed dates on which elections may be held under Section 115.123. The August 7 date which you mention, of course, would be an acceptable date on which the court could set the election since Section 115.123 authorizes the holding of such election on that date.

Very truly yours,



JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

May 17, 1979

OPINION LETTER NO. 112

Honorable Joseph Frappier  
State Senator, District 2  
Room 418, State Capitol Building  
Jefferson City, Missouri 65101

Dear Senator Frappier:

This is in response to your request for an opinion regarding the constitutionality of § 167.231(3), RSMo 1978, which provides:

"3. The board of education of any school district located wholly or primarily in a county of the first class not having a charter form of government and not containing any part of a city of over four hundred thousand population, may provide transportation to and from school for any public school pupil not otherwise eligible for transportation under the provisions of state law, if the parents or guardian of the pupil agree in writing to pay the actual cost of such transportation. The full actual cost shall be paid by the parent or guardian of the pupil and shall not be paid out of any state school aid funds or out of any fund of the school district. The cost of transportation may be paid in installments and the board of education shall establish the cost of the transportation and the time or times and method of payment."

Your concern is centered on the portion of the statute which authorizes the school district to charge a fee for transportation

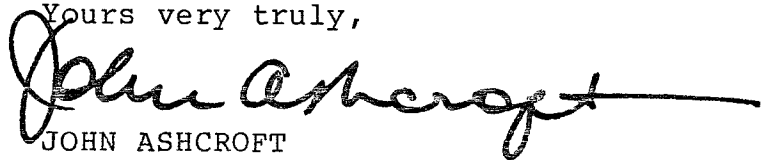
Honorable Joseph Frappier

service in light of Article IX, § 1(a), Missouri Constitution, which guarantees "gratuitous instruction" for all persons of school age.

We are enclosing a copy of Opinion No. 140 (1978) in which this same question was raised. In that opinion, this office declined to provide a ruling because of the Attorney General's duty to uphold the statute in the event its constitutionality were to be challenged. While this office has rendered several opinions in the past regarding the constitutionality of certain school fees, those questions arose in the context of school district practices, rather than statutes.

For these reasons, we must respectfully decline to rule on your question.

Yours very truly,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

Enclosure: Op. No. 140  
Snowden, 9-6-78

May 18, 1979

OPINION LETTER NO. 113  
Answer by letter-Hyatt

Dr. Arthur L. Mallory  
Commissioner  
Department of Elementary and  
Secondary Education  
P. O. Box 480  
Jefferson City, Missouri 65102



Dear Dr. Mallory:

In accordance with your request of April 9, 1979, we have reviewed the Missouri State Department of Elementary and Secondary Education's "Application for Federal Assistance - Migrant Education Program" (fiscal year 1980). This application is being submitted under Title I of the Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended. See 20 U.S.C. § 241c-2.

In addition to the Elementary and Secondary Education Act of 1965, as amended, and the regulations propounded pursuant thereto, our review has taken into consideration Article III, § 38(a), Missouri Constitution, and § 161.092, RSMo Supp. 1975.

Based on the foregoing, we hereby certify that the Missouri State Department of Elementary and Secondary Education has authority under state law to perform the duties and functions of a "state educational agency" as defined in Title I of P.L. 89-10 (20 U.S.C. § 244), including those arising from the assurances set forth in the application.

This opinion letter constitutes our official certification and should be inserted in the appropriate place in each copy of the application.

Very truly yours,

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

June 22, 1979

OPINION LETTER NO. 114

Dr. Arthur L. Mallory  
Commissioner  
Department of Elementary and  
Secondary Education  
P. O. Box 480  
Jefferson City, Missouri 65102

Dear Dr. Mallory:

This letter is in response to your request for our review and certification of the Department of Elementary and Secondary Education's Annual Program Plan for Adult Education, 1979-1982, under the Adult Education Act of 1970, as amended.

Our review has taken into consideration the Adult Education Act of 1970, 20 U.S.C. §§ 1201, et seq., as amended by P.L. 95-561 (November 1, 1978); the federal regulations applicable to such act; Article III, § 38(a), Article IV, § 15, and Article IX, §§ 1(b), 2(a), and 2(b), Missouri Constitution; §§ 161.092, 171.096, 178.430, and 171.091, RSMo 1978, and related provisions.

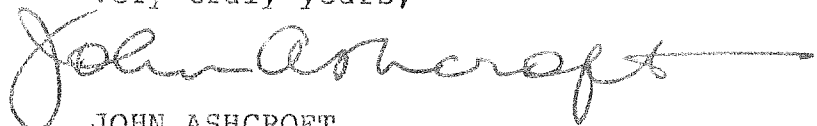
It is the opinion of this office that:

1. The Missouri State Department of Elementary and Secondary Education is the state agency primarily responsible for the state supervision of public elementary and secondary schools and is, therefore, the "state education agency" as that term is defined in 20 U.S.C. § 1202(h).
2. The Department of Elementary and Secondary Education has the authority under state law to perform the functions of the state under the program.

Dr. Arthur L. Mallory

3. The state legally may carry out each provision of the Plan.
4. All of the provisions of the foregoing Plan are consistent with state law.
5. The State Treasurer has authority under state law to receive, hold, and disburse federal funds under the Plan.
6. The Missouri Commissioner of Education has authority to submit the Plan.
7. The State Board of Education, as head of the Department of Elementary and Secondary Education, has formally approved the Plan.
8. The Plan is the basis for state operation and administration of the program, along with applicable state statutes.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

May 3, 1979



OPINION LETTER NO. 115  
ANSWERED BY LETTER-KLAFFENBACH

The Honorable Gary G. Sprick  
Prosecuting Attorney  
Howard County  
Courthouse  
Fayette, Missouri 65248

Dear Mr. Sprick:

This letter is in answer to your question asking whether a county hospital organized under the provisions of Sections 205.160, RSMo, et seq., is required to make public its records concerning wages and salaries of employees.

We believe our Opinion No. 105-1977, copy enclosed, which is self-explanatory, answers your question. Such a hospital comes within the definition of "public governmental body" of Section 610.010, V.A.M.S., and such wages and salaries are not excepted from public inspection. Therefore, such records should be available to and open to the public for inspection.

Very truly yours,

JOHN ASHCROFT  
Attorney General

Enclosure



CARL: Department of Consumer Affairs, Regulation and  
LICENSES: Licensing, is not authorized to promulgate a  
PSYCHOLOGISTS: rule allowing the department, upon the advice  
of the State Committee of Psychologists to grant  
an applicant for licensure a temporary license  
to practice psychology in the State of Missouri.

June 8, 1979

OPINION NO. 118



The Honorable James R. Butler  
Director, Department of Consumer  
Affairs, Regulation and Licensing  
505 Missouri Boulevard  
Jefferson City, Missouri 65101

Dear Mr. Butler:

This opinion is issued in response to your request concerning the following question:

"Is the Missouri Department of Consumer Affairs, Regulation and Licensing authorized by section 337.050 RSMo (Supp. 1977) to promulgate a rule allowing the department, upon the advice of the State Committee of Psychologists to grant an applicant for licensure a temporary license to practice psychology in the State of Missouri until such time as that applicant is first examined by the department?"

Section 337.050.5, RSMo (Supp. 1977) states:

"The department may adopt and promulgate rules governing the conduct of the committee members, setting forth limits of reimbursement of its members, as set forth in subsection 4 of this section, and such other rules, in accordance with law, as shall be reasonable and proper in enabling the committee to function and carry out the purposes of sections 337.010 to 337.070. All such rules shall be promulgated and published in the manner provided in chapter 536, RSMo."

The Honorable James R. Butler

Section 337.050.5, RSMo (Supp. 1977), does grant power to the department to promulgate certain rules and regulations; however, without going into what specific rules the department could properly promulgate, it must be noted that inherent in the grant of any rule-making power is the limitation that the rule or regulation be based on provisions found in the statute under which the rule purports to be made. In Chapter 337, RSMo (Supp. 1977), there is absolutely no provision concerning temporary licensure to practice psychology. Therefore, in the absence of any statutory provision for such temporary licensure, there clearly is no right to promulgate a rule or regulation establishing this licensure, and any such rule would be invalid.

Whatever force and effect a rule or regulation has is derived entirely from the statute under which it is enacted. A regulation cannot supply omissions of the statute. 2 Am.Jur. 2d, Administrative Law, § 289 (1962). Promulgating a rule providing for temporary licensure enlarges upon the terms of the statute, and clearly the department cannot enlarge upon the scope and terms of the statutes governing the practice of psychology under the guise of its rule-making power. Bresler v. Tietjen, 424 S.W.2d 65, 70 (Mo.Banc 1968); Foremost-McKesson, Inc. v. Davis, 488 S.W.2d 193 (Mo.Banc 1972). Numerous cases in other jurisdictions affirm this notion. Hart and Miller Islands Area Environmental Group, Inc. v. Corps of Engineers of the United States, 459 F. Supp. 279 (D.C.Md. 1978); Longbridge Inv. Co. v. Moore, 533 P.2d 564 (Ariz. 1975); DeThorne v. Beck, 280 So.2d 448 (Fla. 1973); People v. Kueper, 249 N.E. 2d 335 (Ill. 1969); State ex rel. Londerholm v. Columbia Pictures Corp., 417 P.2d 225 (Kan. 1966).

#### CONCLUSION

It is the opinion of this office that the Department of Consumer Affairs, Regulation and Licensing, is not authorized to promulgate a rule allowing the department, upon the advice of the State Committee of Psychologists to grant an applicant for

The Honorable James R. Butler

licensure a temporary license to practice psychology in the State of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Bobette Shipman.

Very truly yours,

A handwritten signature in black ink, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

(314) 751-3321

65101

May 16, 1979

OPINION LETTER NO. 119  
(Answer by Letter-Klaffenbach)

The Honorable Hardin C. Cox  
State Senator, District 12  
State Capitol Building  
Jefferson City, Missouri 65101

The Honorable Harold Caskey  
State Senator, District 31  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Senators Cox and Caskey:

This letter is in response to your question asking:

"Does the five percent limit on increases in state contribution toward county official salaries found in section 137.710, RSMo, apply to a situation when there is a substantial increase in compensation for extra duties as in sections 53.076, RSMo, and 65.247, RSMo?"

You also state:

"Section 53.076, RSMo, gives county assessors extra compensation for extra duties imposed. Section 65.247, RSMo, gives township assessors extra compensation for extra duties imposed. Section 137.710, RSMo, requires the state to pay part of the compensation for certain county officials, including assessors. The section contains a five percent limit on increases in the amount the state will contribute."

The Honorable Hardin C. Cox  
The Honorable Harold Caskey

Section 137.710, as amended by Senate Bill No. 277,  
79th General Assembly, provides:

"1. A portion of the salary for the prior year of the assessor, deputies, clerks, officers and other employees of all counties and cities not within a county charged with duties imposed by law upon assessors, their clerks, deputies, officers and employees shall be paid by the state. The state shall pay one-half of such salaries for the year 1976 and each year thereafter shall pay the amount paid for the previous year plus not more than a five percent increase over that amount, but the amount paid by the state shall in no year exceed one-half of the actual salaries.

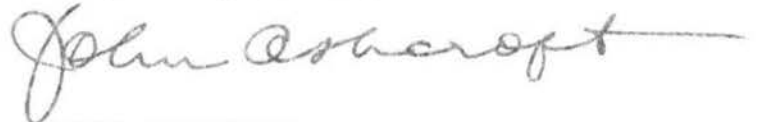
"2. A portion of all fees or other compensation provided by law for the ex officio township assessor in each township in counties having township organization in connection with making the assessment and preparing abstracts of assessment lists and tax bills shall be paid by the state. The state shall pay one-half of such fees or other compensation for the year 1976 and each year thereafter shall pay the amount paid for the previous year plus not more than a five percent increase over that amount, but the amount paid by the state shall in no year exceed one-half of the actual fees or other compensation provided by law.

The Honorable Hardin C. Cox  
The Honorable Harold Caskey

"3. When the amount due has been determined by the state director of revenue, he shall pay such claims out of funds appropriated for that purpose.

It is our view that the provisions in question are quite clear and that they are not ambiguous. Therefore they do apply to the situation you present where there is an increase in compensation for additional duties. The amount to be charged to the state is one-half of such salaries, or fees and other compensation as the case may be, for the year 1976 and each year thereafter in an amount paid for the previous year plus not more than a five percent increase over that amount, the total amount paid by the state in one year not exceeding one-half of the actual salaries, or fees and compensation as the case may be. The only effect that the payment of such additional compensation would have as far as the formula set out in Section 137.710 is concerned is on the computation of the maximum provided therein, one-half of the actual salaries, or fees and compensation as the case may be.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

May 25, 1979

OPINION LETTER NO. 120

The Honorable Theodore L. Johnson, III  
Greene County Counselor  
1002 Plaza Towers  
Sunshine and Glenstone  
Springfield, Missouri 65804

Dear Mr. Johnson:

This letter is in response to your question concerning the right and duty of the Greene County Auditor to audit the books, records, accounts, property and county funds, if any, of Greene County, a first class noncharter county, in the possession of the Public Administrator of Greene County and also asking whether such auditor has any right or duty to audit the accounts of the estates which are being administered by the public administrator.

In answer to your first question, it seems clear that the county auditor has the duty and authority under § 55.160, RSMo 1975 Supp., to conduct certain audits of the public administrator's office with respect to county funds, if any, and county property.

In answer to your second question, it is our view that the county auditor does not have the authority or the duty to generally audit the accounts of the estates which are being administered by the public administrator. In this respect no contention has been advanced as to why the county auditor would have any duty to audit such estates.



The Honorable Theodore L. Johnson, III

In our Opinion No. 135-1964, this office concluded that the public administrator is an elected county official and must file with the county clerk a certified list of all fees received for the performance of his statutory duties as provided by § 51.150(5), RSMo. Under the provisions of § 55.270, RSMo 1975 Supp., an officer of a first class noncharter county who collects fees for himself must make out reports regarding such fees and file the reports with the county auditor. Such section is applicable to the public administrator of such a county.

Therefore, although the county auditor has no authority to generally audit such probate estates, it seems clear that the county auditor has the authority and the duty to audit the estates of the public administrator in the probate division of the circuit court solely with respect to the fees certified by him pursuant to § 51.150 and the fees reported by him to the county auditor pursuant to § 55.270.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft". The signature is written in dark ink and is positioned above the printed name and title.

JOHN ASHCROFT  
Attorney General

July 5, 1979

OPINION LETTER NO. 122  
(Answer by Letter-Wood)



Mr. Gary E. Stevenson  
Prosecuting Attorney  
St. Francois County  
St. Francois County Courthouse  
Farmington, Missouri 63640

Dear Mr. Stevenson:

This is in response to your request for an official opinion of this office on the question of whether a person who is the subject of a report made pursuant to the child abuse or neglect law, Section 210.110 et seq., RSMo 1978, has a right to inspect the report and all records of the Division of Family Services pertaining to it, particularly, to gain knowledge of the identity of the reporter of the suspected child abuse or neglect.

The child abuse or neglect law imposes a duty on health practitioners, social or child care workers, juvenile, probation or peace officers, school officials and teachers, and parents, guardians, household members, and custodians of children, to report in writing to the Division of Family Services suspected instances of child abuse or neglect. Sections 210.115 - 210.130-1. All other persons having reasonable cause to believe that a child is being abused or neglected are invited but not compelled to make such reports, which can be in oral form. Sections 210.115-4 - 210.130.1. The mandated written reports must set forth, among other matters;

" . . . the source of the report; the name  
and address of the person making the report,  
his occupation, and where he can be reached;  
 . . . " Section 210.130.2.

Mr. Gary E. Stevenson

The section of the law dealing with confidentiality of the reports and records provides in material part:

"1. All reports and records . . . maintained by the division, . . . shall be confidential. Information shall not be made available to any individual or institution except to:

"(1) A physician or his designee who has before him a child whom he reasonably believes may be abused or neglected;

"(2) Appropriate staff of the division and of its local offices;

"(3) Any person who is the subject of a report, or the guardian of such person when he is a minor, or who is mentally ill or otherwise incompetent;

"(4) A grand jury, juvenile officer, juvenile court or other court conducting abuse or neglect or child protective proceedings; and

"(5) Any person engaged in a bona fide research purpose, with the permission of the director; provided, however, that no information identifying the subjects of the reports and the reporters shall be made available to the researcher.

For the purpose of this section, 'subjects' include the child and any parent, guardian, or other person responsible for the child, who is mentioned in a report. 'Reporters' shall include all persons and institutions who report abuse or neglect pursuant to [this law].  
. . ." Section 210.150.

The division is required to maintain a central registry capable of receiving and maintaining child abuse or neglect reports and to promulgate rules governing the operation of the central registry. Section 210.145.2 and .9. The following rule has been promulgated:

Mr. Gary E. Stevenson

"(1) Information which will be given to the subject of a report of child abuse or neglect shall include reported allegations, results of subsequent investigations, plans for and actual treatment, and any other disposition. Under no circumstances shall identifying information regarding the reporter of the abuse or neglect be released."  
13 C.S.R. 40-31.020.

We believe the above rule is a proper exercise of the discretion vested in the Division and is not contradictory of the enabling law. We do not perceive in Section 210.150 an absolute requirement that the Division make available all information it may have in any child abuse or neglect case file to the person who is the subject of the report, or the parent, guardian or other individual person responsible for the subject person, but only an authorization for the Division to release some information in those files to persons in the described category.

We are accordingly of the opinion that a person who is the subject of a child abuse or neglect report may inspect only such part of the report and the record of the investigation of the report as is allowed by rule promulgated by the Division of Family Services for operation of the central registry pursuant to Section 210.145 and that under such currently effective rule a subject person may not be informed of the identity of the person reporting the suspected child abuse or neglect to the Division.

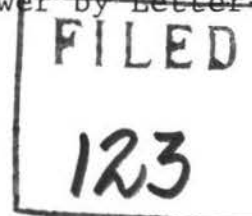
Sincerely,

JOHN ASHCROFT  
Attorney General

August 1, 1979

OPINION LETTER NO. 123  
(Answer by Letter Hyatt)

The Honorable Harriett Woods  
State Senator, District 13  
Room 329, State Capitol Building  
Jefferson City, Missouri 65101



Dear Senator Woods:

This letter is in response to your request for an opinion of this office on the following questions:

1. Whether § 164.011(1), RSMo Supp. 1975, should be construed to give a Board of Education authority to divert what the voters have voted for one purpose to some other purpose, and
2. If so, whether such provision is constitutional in light of the decision in Street v. Maries County R-1 School District of Maries County, 511 S.W.2d 814 (Mo. 1974).

Section 164.011.1 provides:

"1. The school board of each district annually shall prepare an estimate of the amount of money to be raised by taxation for the ensuing school year, the rate required to produce the amount, and the rate necessary to sustain the school or schools of the district for the ensuing school year, to meet principal and interest payments on the bonded debt of the district and to provide the funds to meet other legitimate district purposes. In preparing the estimate the board shall have sole

The Honorable Harriett Woods

authority in determining what part of the total authorized rate shall be used to provide revenue for each of the funds as authorized by section 165.011, RSMo 1969."

The funds referred to in Section 165.011, RSMo, are the teacher's fund, the incidental fund, the free textbook fund, the building fund, and the debt service fund.

Your concern is with that part of Section 164.011, which provides that in preparing its estimate, the board of education ". . . shall have sole authority in determining what part of the total authorized rate [of levy] shall be used to provide revenue for each of the funds . . . ."

You have pointed out that Art. X, § 11(c), Missouri Constitution, requires that the purpose of a proposed increase in a school tax levy must be submitted to the voters, Street v. Maries County R-1 School District of Maries County, 511 S.W. 2d 814 (Mo. 1974), but that Section 164.011 appears to give a school board the authority to divert revenue to a fund or a purpose other than that for which it has been voted. For example, if the voters approve an increase in the tax levy for building purposes, could the board subsequently transfer any part of the revenues generated by that levy to the teacher's fund pursuant to Section 164.011?

We believe that the language of Section 164.011 does not require such a conclusion. We find nothing in Section 164.011 which requires a conclusion that the board has authority to divert tax funds which were authorized by the voters to be levied for a particular purpose, such as the funds in question. Clearly the authority of the board exercised pursuant to Section 164.011 is subject to these constitutional limitations.

Very truly yours,

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

June 15, 1979

OPINION LETTER NO. 127

The Honorable Ronnie DePasco  
Representative, District 24  
State Capitol, Room 401  
Jefferson City, Missouri 65101

Dear Mr. DePasco:

This letter is in response to your request for an official opinion of this office concerning the question of whether a circuit court administrator or circuit clerk has authority to maintain permanent case records and judgments of the probate court, misdemeanor and municipal ordinance violation cases or records in felony cases before the filing of an information.

We enclose a copy of a memorandum dated June 1, 1979, addressed to this office by the legal counsel for the court administrator of the circuit court of Jackson County, Missouri. This memorandum is self-explanatory.

It is our view that in light of the position taken by the circuit court, en banc, as indicated by the memorandum, that it would be inappropriate for this office to purport to issue a legal opinion on this subject. We are of the view that the situation does not present a question which is properly the subject of an opinion of this office under Section 27.040, RSMo.



Page Two  
The Honorable Ronnie DePasco  
June 15, 1979

We conclude that we must respectfully decline to issue  
you an opinion on this subject.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft". The signature is written in dark ink and is positioned above the typed name.

JOHN ASHCROFT  
Attorney General

Enclosure

TAXATION

(Roads and Bridges):

TOWNSHIPS:

ROADS AND BRIDGES:

Township board of directors in a county under township organization is authorized to levy a road and bridge tax of fifty cents on each hundred dollars assessed valuation without a vote of the residents of the township or the residents of the county under the provisions of Section 12(a) of Art. X, Missouri Constitution.

June 1, 1979

OPINION NO. 129

The Honorable Michael J. Lybyer  
Representative, 151st District  
State Capitol, Room 235  
Jefferson City, Missouri 65101



Dear Representative Lybyer:

This opinion is in response to your question asking:

"Is a township board in a county under the county township organization form of government authorized under the provisions of § 12 (a) of Art. X of the Constitution to levy a road and bridge tax not exceeding fifty cents on each hundred dollars assessed valuation without a majority vote by the residents of the township or the residents of the county?"

You also state:

"At the November general election, 1978, the voters adopted as part of the Constitution, § 12(a) of Art. X, as proposed by House Joint Resolution No. 67 of the 79th General Assembly. This constitutional provision provides that the county court in nontownship counties and the township board in township counties may levy an additional road and bridge tax not to exceed fifty cents on the hundred dollar valuation. The section further provides that before any county may increase its tax levy for road and bridge purposes above thirty-five cents it must submit such increase to the qualified voters of the county and such authorization

The Honorable Michael J. Lybyer

must be granted by the voters before the fifty-cent levy can be made. The question that arises is whether or not the use of the phrase 'any such county' applies only to counties that do not have a township organization form of government or whether such reference applies so as to require a vote of the entire county before any township in a county under township organization can levy fifty cents on the hundred dollars valuation or whether it requires a township in a township organization county to authorize by a majority vote the levy of a fifty-cent rate for road and bridge purposes."

House Joint Resolution No. 67 of the Second Regular Session of the 79th General Assembly, which was adopted by the voters at the general election November 7, 1978, amended § 12(a) of Art. X of the Missouri Constitution, effective at the end of thirty days after the election under § 2(b), Art. XII, Missouri Constitution.

The amendment authorized an increase in the additional tax from thirty-five cents on each hundred dollars of assessed valuation to fifty cents on each hundred dollars of assessed valuation and also inserted the provision, which we underscore in our quotation of § 12(a), as follows:

"In addition to the rates authorized in section II [sic, should be 11] for county purposes, the county court in the several counties not under township organization, the township board of directors in the counties under township organization, and the proper administrative body in counties adopting an alternative form of government, may levy an additional tax, not exceeding fifty cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes: provided that, before any such county may increase its tax levy for road and bridge purposes

The Honorable Michael J. Lybyer

above thirty-five cents it must submit such increase to the qualified voters of that county at a general or special election and receive the approval of a majority of the voters voting on such increase. . . ."  
(Emphasis added)

It is our view that the reference to "the township board of directors in the counties under township organization" clearly refers to township boards organized under Chapter 65, RSMo. The reference which follows, however, in the provision which we have underscored refers only to the submission of the increase to the qualified voters of "that county" for voter approval. We believe that the reference to "that county" is inconsistent with the reference to "the township board of directors in the counties under township organization" and therefore the provision could only literally be applied to counties not under township organization.

This constitutional provision has been held to be self-enforcing. State ex rel. Kersey v. Pemiscot Land and Cooperage Co., 295 S.W. 78 (Mo.Banc 1927). Thus the provision of Section 137.585, RSMo, which limits the levy by the township board of directors to thirty-five cents on each hundred dollar assessed valuation must yield to this constitutional amendment which authorizes a fifty-cent levy.

#### CONCLUSION

It is the opinion of this office that the township board of directors in a county under township organization is authorized to levy a road and bridge tax of fifty cents on each hundred dollars assessed valuation without a vote of the residents of the township or the residents of the county under the provisions of Section 12(a) of Art. X, Missouri Constitution.

Very truly yours,

JOHN ASHCROFT  
Attorney General

BANKS: Under the contract and the arrangement presently existing in connection with the ultra machines, as described in the facts set out above, the use of such machines does not constitute branch banking. This office defers any judgment as to the use of the machine for the transfer of money from a customer's checking account to his savings account until that matter is resolved in the appropriate forum. We recommend, however, that that function be eliminated from the machine until such time as the issues concerning that function have been fully and properly resolved. Further, we do not offer an opinion concerning interstate use of the ultra machine.

November 8, 1979

OPINION NO. 131

Mr. James R. Butler, Director  
Department of Consumer Affairs,  
Regulation, and Licensing  
P. O. Box 1157  
Jefferson City, Missouri 65102



Dear Mr. Butler:

This is in response to your request for an opinion concerning the following question:

In view of the Missouri prohibition against branch banking (Section 362.105, RSMo 1969) which has been incorporated into the National Banking Act (12 U.S.C. Section 36), may a national bank authorized to do business and operating in the State of Missouri enter into a contract with each of several correspondent banks, some of which are located outside of the city and county or state in which the national bank maintains its main banking house, under which contract the correspondent bank agrees to buy an automatic teller machine, install it on its own premises, and permit any person who is a customer of the national bank and holder of an encoded plastic card evidencing accounts held at the national bank to use such card in such automatic teller machine to effect cash withdrawals from a checking account at the customer's bank, transfers from a savings account to a checking account at the

Mr. James R. Butler

customer's bank, transfers from a checking account to a savings account at the customer's bank, transfers from a Master Charge line of credit to a checking account and cash withdrawals from a Master Charge line of credit at the customer's bank and under which contract the national bank agrees to permit such machines to be connected to its computer and to perform data processing services for the correspondent banks including the storage and transmission of data necessary for the efficient operation and coordination of all automatic teller machines connected to the system?

Your opinion request details many facts concerning the contractual arrangement between United Missouri Bank of Kansas City, a national banking organization, and its correspondent bank which uses the "ultra" machine. We will detail these facts verbatim as they appear in your opinion request. They are:

United Missouri Bank of Kansas City, N. A., is a national banking association organized and doing business in Kansas City, Missouri. Virtually 100 percent of its stock is owned by a major Missouri bank holding company, United Missouri Bancshares, Inc., Tenth and Grand Avenue, Kansas City, Missouri 64141. The same holding company owns virtually all of the stock of nineteen other Missouri banking corporations. United Missouri Bank of Kansas City, N. A. is by far the largest of the banks owned by the holding company and is sometimes therefore referred to as its lead bank.

The lead bank has obtained the right and license to the use of the name "Ultra" in connection with automatic teller machines and encoded plastic cards issued to activate such machines. It has entered into contracts with seven other banks located in the Kansas City metropolitan area by which it has authorized those banks, referred to as correspondent banks, to use the Ultra name in connection with the automatic teller machines installed on the premises of such correspondent banks.

Mr. James R. Butler

Five of the seven banks are owned by the same holding company as the lead bank. One of the correspondent banks is located in Overland Park, Kansas. The contracts have resulted in a network of automatic teller machines operating at fifteen separate locations but connected to the same central computer owned by the lead bank. Three of the locations are premises owned by the lead bank.

The contract referred to gives the correspondent bank the right to use the name Ultra in connection with the automatic teller machines purchased or leased by the correspondent bank and the cards issued to its customers to permit them to use such machine. The correspondent agrees to permit access to its automatic teller machine to the customers of the lead bank and all other banks which have signed a similar contract with the lead bank. The Ultra card activates the Ultra machines and permits the holder of the card to draw cash from his checking account, transfer money from his savings account to his checking account, transfer money from his checking account to his savings account, request information concerning his accounts, withdraw cash pursuant to a master charge line of credit and obtain a transfer of funds from his master charge line of credit to his checking account. Therefore, a customer of the lead bank who holds an Ultra card issued by the lead bank may effect such a transaction at any of the fifteen locations referred to above. Each Ultra machine is 'on line' with the lead bank's computer. Thus, a withdrawal of cash at one Ultra machine will immediately be reflected in the computer record of the customer's account and the reduced balance of the account will be given if the customer subsequently verifies his account balance at any of the other Ultra machines.

Each correspondent bank either owns or leases the machine operated on its premises



Mr. James R. Butler

and services the machine by resupplying it with cash and "acknowledgement" forms as needed. With respect to the cash withdrawal capability of the machines, each correspondent bank agrees to indemnify and hold harmless the customer's bank of record from any liability and expenses which the bank of record may incur resulting from unauthorized use of their customer's transaction cards. Therefore, if a customer of the lead bank withdraws funds from a machine located on the premises of a correspondent bank at a time when the customer's account at the lead bank contains insufficient funds to support the transaction, the correspondent bank is held responsible for the deficiency.

The question whether the operation of the Ultra system is legal arises because the National Banking Act imposes the same limits on national banks establishing and operating branches as is imposed on state banks by the law of the state in which the national bank is located. (See 12 U.S.C. Section 36; 362.105, RSMo 1969; 362.107, RSMo Supp.; 362.108, RSMo Supp.)

United Missouri Bank of Kansas City, which is offering the ultra system, has expressed its views on this subject. It points out in summary that each individual bank purchased and now owns and operates and maintains its own ultra machine. Each individual ultra machine is carried on the books of the bank which owns it as an asset. No other bank has an ownership interest in such machine. No bank pays any moneys to any other bank for use by its customers of ultra machines located at other banks.

Additionally, it is clear that the functions performed through the teller machine are essentially traditional banking functions that have long been performed through human tellers of banks for customers of other banks. Many activities affecting customers of one bank are done by and through another bank. Examples are wire transfer of funds and the cashing of checks.

As indicated by the facts presented by the Commissioner's office and United Missouri Bank of Kansas City, United Missouri Bank of Kansas City is a national bank. The branch banking laws for national banks appear in 12 U.S.C. § 36. The National Branch Banking Act, as it refers to branch banking by national banks, refers to

Mr. James R. Butler

and incorporates state banking laws concerning branch banking. Missouri laws on branch banks appear in §§ 362.105 and 362.107, RSMo 1978. Section 362.105, RSMo 1978, prohibits branch banking. Section 362.107, RSMo 1978, is an exception to that prohibition.

Section 362.105, RSMo 1978, apparently is the only pertinent reference to branch banking in the Missouri banking code. The term branch is not otherwise defined in the state law. Section 362.107, RSMo 1978, sets out in detail permission to establish up to two facilities in the same city and county in which the main banking house is located. Section 362.108, RSMo 1978, is a statute which applies to second, third, and fourth class counties and permits a bank to establish one separate facility in another town if certain criteria is met.

Additionally, § 362.105, RSMo 1978, provides for the powers and authority of banks and trust companies under the laws of this state. Section 362.105(11), RSMo 1978, provides that a bank may contract with another bank, bank service corporation, partnership, corporation, association, or person, within or without the state, to render certain data processing services. It further provides:

[H]owever, that this subdivision shall not be deemed to authorize a bank or trust company to provide any customer service through any system of electronic funds transfer at places other than bank premises;

After reviewing the applicable contract and considering the present law, it is the view of this office that the ultra machines are performing traditional banking functions which are generally not prohibited as branch banking when considering the nature of each function performed by the machine. As will be discussed in this opinion, the only serious question we have with regard to the function of the machine as constituting branch banking in this state relates to the transfer of money by a customer from his checking account to his savings account. Apparently, the United States Court of Appeals, District of Columbia, has held that the transfer from interest bearing time deposit savings accounts to non-interest bearing demand checking accounts is not authorized by relevant federal law. However, the court has stayed its order until January 1, 1980, in the expectation that Congress will pass legislation concerning this matter. American Bankers Association v. Connell, 768 Fed. Banking L. Rep. (CCH) ¶ 97785 (June 21, 1979). All other functions are not questioned by this opinion, namely, cash withdrawals charged to checking account, Master Charge transactions, cash loans, and loan deposit to checking account. It is our understanding that the machines do not receive deposits from customers of United Missouri Bank of Kansas City.

Mr. James R. Butler

The Commissioner of Finance has submitted through his counsel a number of federal cases which he believes are authority for the proposition that the ultra bank constitutes branch banking in this state. We have reviewed those citations and believe that the federal cases on this subject are not helpful in that the cases involve a national bank placing electronic teller machines in free standing locations away from the bank's premises, or in a store, factory, or office, also away from the premises of any bank. In none of these cases did the bank of which the electronic teller machine was alleged to have been a branch locate that machine on the premises of another bank.

In 1967, the Missouri legislature made two changes to § 362.105, RSMo 1978. First, in subsection (1) it added reference to § 362.107, RSMo 1978, so that the last part of the subsection stated:

[N]o bank or trust company shall maintain in this state a branch bank or trust company, or receive deposits or pay checks except in its own banking house or as provided in section 362.107;

At the same time, it added subsection (11) which now states:

1. Every bank and trust company created under the laws of this state may:

\* \* \*

(11) Contract with another bank or trust company, . . . within or without the state, to render or receive services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, book-keeping, accounting, statistical, or similar services, or the storage, transmitting or processing of any information or data; . . . provided, however, that this subdivision shall not be deemed to authorize a bank or trust company to provide any customer services through any system of electronic funds transfer at places other than bank premises;

Mr. James R. Butler

The proviso at the end of subsection (11) clearly indicates that the Missouri legislature recognized that electronic funds transfers do take place between banks and wanted to make clear that this section did not expand the practice to non-bank premises. It should be noted that the phrase "or the storage, transmitting or processing of any information or data" was inserted by amendment subsequent to the initial passage of the section. Thus, it would appear that the legislature was specifically authorizing electronic data processing interlocks necessary for the operation of automatic teller machines such as the ultra machine. Of course, each transaction involving the ultra machine does involve the storage, transmitting, or processing of information or data.

Further, the language in § 362.105(11), RSMo 1978, supports the analogy contended by United Missouri Bank of Kansas City that the ultra bank is similar to the use of the telephone by a customer of one bank at another bank. Certainly, a request by a customer for information on his balance in either his checking or savings account would be covered by the language cited above. Because a customer can transfer money from his checking account to his savings account by telephone, he essentially could do the same thing by use of the ultra machine but for the fact that the United States Court of Appeals, District of Columbia, has taken issue with this particular function of the machine. Obviously, this function can be removed from the machine without interfering with the other appropriate functions that the machine performs.

Moreover, we find no provision in the banking laws of this state which prohibit ultra machines. We do find a very positive approach by the Missouri legislature to insure that such automatic tellers are kept on bank premises and are not placed in supermarkets, stores, or offices. We also find, as a result of the federal cases cited by the Commissioner's office, that ownership of the ultra machine in another bank by United Missouri Bank of Kansas City would constitute branch banking contrary to the laws of this state.

Finally, we note that some correspondent banks with the ultra machines are located outside the state of Missouri. While the office does not pass on the propriety of a national bank using such equipment across state line since such matter may be a matter of federal jurisdiction, state banks do not possess the authority to cross state lines for the purpose of servicing their customers with automated teller services such as ultra.

#### CONCLUSION

It is the opinion of this office that under the contract and the arrangement presently existing in connection with the ultra

Mr. James R. Butler

machines, as described in the facts set out above, the use of such machines does not constitute branch banking. This office defers any judgment as to the use of the machine for the transfer of money from a customer's checking account to his savings account until that matter is resolved in the appropriate forum. We recommend, however, that that function be eliminated from the machine until such time as the issues concerning that function have been fully and properly resolved. Further, we do not offer an opinion concerning interstate use of the ultra machine.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Terry C. Allen.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General



LIQUOR:  
LICENSES:

Ethanol used solely as a fuel  
for motor vehicles is not an  
"intoxicating liquor" as defined  
in §311.020, RSMo 1978. It is

our further opinion that individuals who manufacture ethanol  
on their own land solely for the purpose of providing fuel  
for motor vehicles are not required to be licensed and  
regulated under Chapter 311, RSMo as long as the alcohol  
produced at the facility is denatured by some means.

July 18, 1979

OPINION NO. 132



Honorable James L. Russell  
Representative, District 6  
State Capitol Building  
Room 400  
Jefferson City, Missouri 65101

Dear Representative Russell:

This is in response to your request for an official  
opinion of this office concerning the following questions:

"Is ethanol which is used as fuel for  
motor vehicles an 'intoxicating liquor'  
under section 311.020, RSMo 1978?"

"Must private individuals who manufacture  
ethanol on their own land and solely for  
the purpose of providing fuel for their  
own motor vehicles be licensed and regu-  
lated under Chapter 311, RSMo, specifically  
section 311.180, RSMo 1978?"

Pursuant to §311.050 RSMo 1978, anyone who distills  
intoxicating liquor in Missouri must first obtain a license  
from the Supervisor of Liquor Control. This statute provides  
as follows:

"It shall be unlawful for any person,  
firm, partnership or corporation to  
manufacture, sell or expose for sale  
in this state intoxicating liquor, as

defined in section 311.020, in any quantity, without taking out a license."

The cost of this license will vary depending upon the alcoholic content of the liquor which is produced. Section 311.180, RSMo provides in part:

"Manufacturers, wholesalers, solicitors--license fees.--1. No person, partnership, association of persons or corporation shall manufacture, distill, blend, sell or offer for sale intoxicating liquor within this state at wholesale or retail, or solicit orders for the sale of intoxicating liquor within this state without procuring a license from the supervisor of liquor control authorizing them so to do. For such license there shall be paid to and collected by the director of revenue annual charges as follows:

\* \* \*

"(2) For the privilege of manufacturing in this state intoxicating liquor containing not in excess of twenty-two percent of alcohol by weight the sum of one hundred dollars;

"(3) For the privilege of manufacturing, distilling or blending intoxicating liquor of all kinds within this state the sum of two hundred dollars;

\* \* \*

"2. Provided further, however, that solicitors, manufacturers and blenders of intoxicating liquor shall not be required to take out a merchant's license for the sale of their products at the place of manufacture or in quantities of not less than one gallon."

"Intoxicating liquor" as used in Chapter 311 is defined in §311.020, RSMo 1978. This statute provides:

"The term 'intoxicating liquor' as used in this chapter, shall mean and include alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt, or other liquors, or combination of liquors, a part of which is spirituous, vinous



or fermented, and all preparations or mixtures for beverage purposes, containing in excess of three and two-tenths percent of alcohol by weight."

If alcohol is distilled solely for the purpose of providing fuel for motor vehicles, then such alcohol is not being used for "beverage purposes" and therefore would not be considered "intoxicating liquor" as used in Chapter 311, RSMo 1978. A similar conclusion was reached by this office in Op. Atty. Gen. No. 37, Mueller, 1-17-79 concerning the application of the State liquor laws to wines used solely for sacramental purposes.

We note, however, that the alcohol which is obtained directly from the distillation process is capable of being used not only for experimental fuel purposes, but also for consumption as a beverage. For this reason, the Division of Liquor Control requires that all individuals who distill alcohol for such experiments denature the alcohol as soon as it emerges from the distillation process. One means of denaturing this product is by the addition of gasoline. If the alcohol is rendered unfit for human consumption by some means such as this, the Division of Liquor Control does not require any type of license for such experiments. Should the alcohol not be denatured by some means, the Division of Liquor Control requires that the individual comply with the provisions of section 311.180 supra.

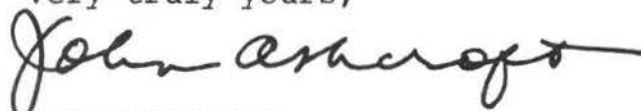
A similar approach to this subject has been taken by the Bureau of Alcohol, Tobacco and Firearms. In ATF Release P 5000.1, the Bureau of Alcohol, Tobacco and Firearms allows for the experimental use of alcohol as a fuel product only at the plant premises where the alcohol is produced. Any alcohol removed from the premises must be tax-paid at the rate of \$10.50 per proof gallon. If the alcohol is denatured prior to its removal from the plant premises, no federal excise tax will be assessed.

#### CONCLUSION

Therefore, it is the opinion of this office that ethanol used solely as a fuel for motor vehicles is not an "intoxicating liquor" as defined in §311.020, RSMo 1978. It is our further opinion that individuals who manufacture ethanol on their own land solely for the purpose of providing fuel for motor vehicles are not required to be licensed and

regulated under Chapter 311, RSMo as long as the alcohol  
produced at the facility is denatured by some means.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

May 29, 1979

OPINION LETTER NO. 133

The Honorable David A. Schwartz  
Prosecuting Attorney  
Maries County  
Post Office Box 212  
Vienna, Missouri 65582

Dear Mr. Schwartz:

This letter is in response to your question asking as follows:

"Pursuant to the provisions of Sections 137.555 to 137.600 and Article Ten Section 12(a), RSMo., as amended, a special election was held to determine whether or not the voters of Maries County, Missouri desired an increase in taxes of 15¢ on the \$100 assessed valuation, which election was held on April 3, 1979. Maries County has been commonly known to contain a common road district no. 1 and a common road district no. 2, however, no records can be found pursuant to the provisions of Section 231.010 RSMo., as to whether or not Maries County was divided into two distinct road districts. The election was conducted on separate ballots, copies enclosed, with results being that the issue carried in common road district no. 1 by 14 votes and failed in common road district no. 2 by 5 votes.

"Considering the way the election was held and the provisions of the statutes quoted

The Honorable David A. Schwartz

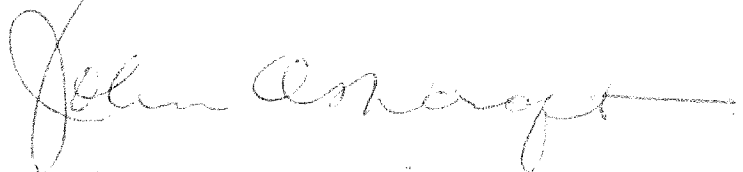
above, will this increase in levy be applicable throughout the county or only in common road district no. 1?"

While we do not purport to pass on factual situations, it is clear from what you state that there is no record of the county court creating any road districts pursuant to § 231.010, RSMo.

Under the holding of State ex rel. to the Use of Moore v. Wabash R. Co., 208 S.W.2d 223 (Mo.Sup. 1948), only road districts are authorized to vote upon themselves the second additional tax levy for road and bridge purposes which is authorized by the second sentence of § 12 of Art. X of the Missouri Constitution and § 137.565, RSMo.

Inasmuch as it appears that no such common road districts actually exist and since the county itself is not a "road district", it seems clear that the election was invalid and as a consequence such levy cannot be made.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

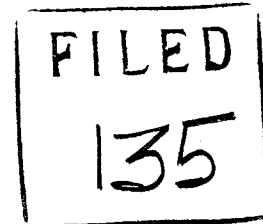
JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

June 6, 1979

OPINION LETTER NO. 135



Dr. Arthur L. Mallory, Commissioner  
Department of Elementary and  
Secondary Education  
6th Floor, Jefferson State Office Building  
Jefferson City, Missouri 65101

Dear Dr. Mallory:

In accordance with your request of May 15, 1979, we have reviewed the Missouri State Department of Elementary and Secondary Education's State Application for Title I, ESEA, Financial Assistance to Local and State Agencies to Meet Special Education Needs. This application for federal funds is being submitted under Title I of the Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended.

In addition to the Elementary and Secondary Education Act of 1965, as amended, and the regulations propounded pursuant thereto, our review has taken into consideration Article III, Section 38(a), Missouri Constitution, and Section 161.092, RSMo Supp. 1975.

Based on the foregoing, we hereby certify that the Missouri State Department of Elementary and Secondary Education has authority under state law to perform the duties and functions of a state educational agency under Title I of the Elementary and Secondary Education Act of 1965, as amended, and the regulations propounded pursuant thereto, including those arising from the assurances set forth in the application.

In our review last year, we made reference to the questions raised by the Missouri Supreme Court's decision in Mallory v. Barrera, 544 S.W.2d 556 (Mo.Banc 1976), regarding the ability of Missouri's state educational agency to enforce the comparability requirements of Title I and its implementing regulations. As we stated last year, we do not believe this certification letter

Dr. Arthur L. Mallory

should address that issue since it involves the administrative interpretation of federal regulations, but raise it for consideration by the United States Office of Education.

In addition to this opinion letter which constitutes our official certification, we have executed the form of certification attached to the Annual Program Plan.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

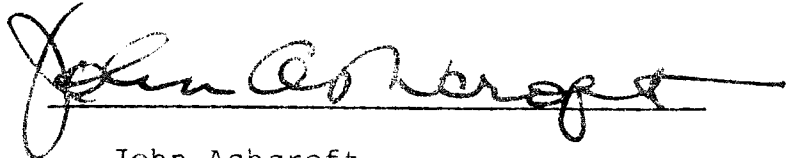
JOHN ASHCROFT  
Attorney General

State Application for ESEA, Title I, Funds

I. Attorney General or Chief Legal Officer

The Department of Elementary and Secondary Education has the authority under State law to perform the duties and functions of a State educational agency under Title I of the Act and the regulations in 45 CFR Part 116, including those arising from the assurances in Section 435(b) of the General Education Provisions Act.

Signature



Typed Name

John Ashcroft

Official Title

Attorney General of Missouri

Date

II. Governor's Comments (To be signed by the Governor or his or her representative)

The following are the comments from the Governor, or a statement that the Governor does not have any specific comments.

Signature

\_\_\_\_\_

Typed Name

\_\_\_\_\_

Official Title

\_\_\_\_\_

Date

\_\_\_\_\_



*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

September 6, 1979

OPINION LETTER NO. 137

The Honorable George P. Dames  
Representative, 50th District  
Route 3, Box 82  
O'Fallon, Missouri 63366

Dear Mr. Dames:

This letter is in response to your request for an opinion reading as follows:

"How can the Missouri Driver's License Bureau interpret the statutes governing temporary suspension of a driver's license (due to excessive points for speeding violations) in such a way as to deprive family members the use of the vehicle, and to require the person temporarily suspended to have an SR-22 filing (obtainable only through high casualty insurance companies) when, in fact, the present insurance carrier has agreed to continue coverage far exceeding the requirements of the SR-22 per the attached letter."

Section 303.150, RSMo 1978, specifically requires the Director of Revenue to suspend the registration of all motor vehicles in the name of any person whose driving privileges have been suspended or revoked under any law of this state, unless such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

The Honorable George P. Dames

It is apparent from the face of this statute that the Director is authorized to suspend the registration of any vehicle owned solely by an individual whose driving privileges have been revoked or suspended because of the accumulation of points for speeding violations. Section 303.320, RSMo 1978, further provides that if any owner's registration has been suspended hereunder, such registration shall not be transferred nor the motor vehicle in respect of which such registration was issued registered in any other name until the director is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purpose of the Safety Responsibility Law.

In subsequent correspondence dealing with this opinion request, you asked whether this disability would apply to jointly owned vehicles. The term "owner" is defined in Section 303.020(9), RSMo 1978, as a person who holds the legal title to a motor vehicle. When an individual's license is suspended or revoked under Chapter 302 for point violations, the director only suspends the motor vehicle registration of all vehicles registered in the name of that person solely. When a vehicle is jointly owned by a licensee whose driving privileges have been suspended and another individual whose license is still in effect, the motor vehicle registration is not suspended. Under these circumstances, the suspended licensee cannot be considered the owner of the motor vehicle, but only an individual with an ownership interest which is shared with another.

Your second question reveals a basic misunderstanding of the nature of an "SR-22 Form." The form (copy enclosed) is only a means of demonstrating compliance with the statutes. Section 303.160, RSMo 1978, states that proof of financial responsibility when required under Chapter 303 may be given by filing a certificate of insurance as provided in Section 303.170 or Section 303.180. Section 303.180, RSMo 1978, is a means of providing proof of insurance by a nonresident. Section 303.170, RSMo 1978, provides as follows:

"1. Proof of financial responsibility may be furnished by filing with the director the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person

The Honorable George P. Dames

required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

"2. No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate."

\* Even a casual reading of this section demonstrates that certain information must be set forth when filing proof of responsibility by insurance certificate before the certificate can be accepted by the director. More importantly, the information contained therein must be certified in writing by an insurance carrier authorized to do business in this state. Once a certificate is given, the company has the responsibility of notifying the director in the event of cancellation. See Section 303.210, RSMo 1978.

The "SR-22 Form" was developed as a standard certificate in order to ensure that all requirements were met. It is not necessary that such a form be filed with the director when proof of financial responsibility is required, but all of the information contained on that form must be presented and certified in order to comply with Section 303.170, RSMo 1978. The letter which you provided in your opinion request is simply not adequate as an insurance certificate. It is not certified by anybody, but is merely a statement under the signature of a person who is not listed upon the departmental records as being authorized to bind the insurance company. Under these circumstances, the director has no assurances that a proper insurance policy will be in effect as required by Chapter 303.

The Honorable George P. Dames

Only the insurance company can determine whether or not it wishes to continue to insure someone whose license to drive has been suspended or revoked. Section 379.114, RSMo 1978, specifically permits an insurer to cancel a policy following suspension or revocation during the policy period. However, once the decision to insure is made, the insurance company must provide the Director of Revenue with a certificate of insurance sufficient to meet the requirements of the statute.

Very truly yours,

A handwritten signature in black ink, reading "John Ashcroft". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

JOHN ASHCROFT  
Attorney General

Enclosure

Name and  
Address of  
Insurance Company

**INSTRUCTIONS:**

MAIL ORIGINAL AND COPY TO THE  
ADMINISTRATIVE AUTHORITY WITH  
WHICH THIS CERTIFICATE IS FILED.

(ORIGINAL)

**AAMVA UNIFORM  
FINANCIAL RESPONSIBILITY FORM**

Case No. FP- \_\_\_\_\_  
Official Use Only

Name of Insured \_\_\_\_\_  
Last Name First Middle

Address of Insured \_\_\_\_\_

Current Policy No. \_\_\_\_\_ Effective From \_\_\_\_\_ to \_\_\_\_\_

This certification is effective from \_\_\_\_\_ and continues until canceled or terminated in accordance with the financial responsibility laws and regulations of this state. The insurance hereby certified is provided by an:

☐ OWNER'S POLICY—applicable to the following described vehicle(s):

Year of Model	Trade Name	Model	Body Type	Identification No.

(If space above is insufficient to contain all motor vehicles covered, prepare list on paper of identical width and paste on.)

☐ OPERATOR'S POLICY—applicable to any non-owned vehicle.

SR-22

**MISSOURI FINANCIAL RESPONSIBILITY INSURANCE CERTIFICATE**

The company signatory hereto hereby certifies that it has issued to the above named insured a motor vehicle liability policy as required by the financial responsibility laws of this state, which policy is in effect on the effective date of this certificate.

\_\_\_\_\_  
Name of Insurance Company

Date \_\_\_\_\_ By \_\_\_\_\_  
Signature of Authorized Representative

SR-22

OFFICERS: A member of the Commission on Atomic Energy,  
STATE OFFICERS: who was appointed by former Governor Christopher  
CONSTITUTIONAL LAW: S. Bond with the advice and consent of the Senate  
to serve at the pleasure of the governor pursuant to § 18.010, RSMo, who has not been removed from office, serves for an indefinite period of time, beyond the expiration of Governor Bond's term, and at the pleasure of Governor Joseph P. Teasdale.

July 2, 1979

OPINION NO. 138

The Honorable Hardin C. Cox  
State Senator, District 12  
602 West Calhoun  
Rock Port, Missouri 64482

Dear Senator Cox:

This opinion is in response to your question asking:

"Does a member of a statutory state agency, who is to serve at the pleasure of the governor, continue to serve after the expiration of the term of the governor making the appointment?"

You also state:

§18.010, RSMo, established a Commission on Atomic Energy to be composed of five members of the senate, five members of the house, and seven members from the community at large. The members from the community at large are to be appointed by the governor, with the advice and consent of the senate, and are to serve at the pleasure of the governor.

"Governor Bond appointed seven such members. They have not resigned, and apparently are available to serve. Governor Teasdale has not made any replacement appointments.

"Are Gov. Bond's appointees still members of the Commission?"

The Honorable Hardin C. Cox

It is our view that the general rule which is to be applied to the situation you present is that, in the absence of provisions which would require a contrary conclusion, the period of holding office by a public officer who is appointed to serve at the pleasure of the appointing authority continues after the expiration of the appointing authority's term subject to removal by the successor to the appointing authority. See State ex rel. Tamminen v. City of Eveleth, 249 N.W. 184 (Minn. 1933), Jennings v. Wilson, 179 Misc. 358, 40 N.Y.S.2d 400 (1942), and cases cited therein.

It is also our view that if it could be argued that such an appointive officer has a term which terminates with the expiration of the term of the authority which appointed him, then § 12 of Art. VII of the Missouri Constitution would apply and such an officer would be entitled to hold office until his successor was duly appointed and qualified.

However, we believe that the answer is quite simply that such an officer serves for an indefinite period beyond the term of the authority appointing him subject to the pleasure of the person holding the office of governor.

#### CONCLUSION

It is the opinion of this office that a member of the Commission on Atomic Energy, who was appointed by former Governor Christopher S. Bond with the advice and consent of the Senate to serve at the pleasure of the governor pursuant to § 18.010, RSMo, who has not been removed from office, serves for an indefinite period of time, beyond the expiration of Governor Bond's term, and at the pleasure of Governor Joseph P. Teasdale.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a stylized, flowing script.

JOHN ASHCROFT  
Attorney General



*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

June 28, 1979

OPINION LETTER NO. 139

The Honorable Emory Melton  
State Senator, 29th District  
Post Office Box 488  
Cassville, Missouri 65625

Dear Senator Melton:

This letter is in response to your request for an opinion asking:

"Is a fire protection district authorized under Chapter 321 of the Revised Statutes of Missouri to provide fire protection services to people living outside the district, regardless of whether they live in the county which contains the district or whether they live in an adjoining county, for an annual fee to individuals desiring this service?"

We find no provision for the furnishing of such services to individuals for a fee outside of the limits of the fire protection district. Section 321.220, RSMo, is clear in this respect in that it provides that the board of directors of the fire protection district for the purpose of providing such fire protection "to the property within the district" has certain enumerated powers.

It is our view that this express limitation of the powers means that the board of directors cannot furnish such services to individuals for a fee outside the district limits.

The Honorable Emory Melton

While it is also clear that the board of directors does have the power under § 321.220 (4) to enter into certain contracts, as provided, which may possibly include some services under certain circumstances outside of the district, the situation you present does not involve any such agreement.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", followed by a horizontal line.

JOHN ASHCROFT  
Attorney General

COURT COSTS: Section 483.617, as enacted by House Bill  
CRIMINAL COSTS: No. 1634 of the 79th General Assembly,  
CRIMINAL PROCEDURE: refers only to fees chargeable against the  
county upon dismissal of criminal cases  
and is ineffective insofar as it purports to nullify provisions  
of statutes relative to costs in criminal cases resulting in  
conviction or acquittal.

October 17, 1979

OPINION NO. 140

The Honorable Joe Moseley  
Prosecuting Attorney  
Boone County Courthouse  
Columbia, Missouri 65201

Dear Mr. Moseley:

This opinion is in response to a question asked by your  
assistant, Ms. Kandice Johnson, as follows:

In light of Sec. 483.617 RSMo, does  
the county have responsibility for  
paying court costs in misdemeanor  
cases. In particular does the county  
now have responsibility for paying  
witness fees and sheriff [of another  
county] fees in the following cir-  
cumstances:

- a) dismissal of a misdemeanor case
- b) conviction of a misdemeanor case
- c) acquittal of a misdemeanor case

Section 483.617, RSMo, as enacted by House Bill No. 1634  
of the 79th General Assembly, provides:

Notwithstanding the provisions of  
sections 483.530, 483.550, 483.610,  
483.615, 550.030, 550.040 and 550.-  
090, RSMo, and any other provisions  
of law, if any criminal case be dis-  
missed after August 13, 1978, no  
fees shall be chargeable against the  
counties or the city of St. Louis  
upon such dismissal.

The Honorable Joe Moseley

Section 483.617 became effective August 13, 1978, pursuant to § B.4 of House Bill No. 1634.

Two of these sections referred to in § 483.617, sections 483.610 and 483.615 were repealed by House Bill No. 1634, effective January 2, 1979. Both sections referred to certain clerk's fees in the magistrate court and the reporting of such fees.

Section 483.617, as originally introduced by House Bill No. 1634 but not as truly agreed to and finally passed and therefore not effective, provided:

1. Notwithstanding the provisions of sections 483.610 and 483.615 and any other provision of law, during the time of the effectiveness of this section if a criminal case has been pending before a magistrate on the effective date of this section for a period of more than six months and the case is dismissed by the magistrate while this section is effective, no fees provided in section 483.610 shall be chargeable against the counties or the city of St. Louis upon such dismissal.

2. This section shall terminate January 1, 1979.

We have recited the provision of § 483.617 as it was introduced in order to show some legislative history of this section which should be of help to us in determining the effect of the provisions finally adopted.

Section 483.617, as enacted into law, in addition to containing the reference to the two repealed sections, 483.610 and 483.615, also refers to five other sections and "any other provisions of law." Sections 483.530 and 483.550, which are referred to, provided for certain fees of certain clerks of the circuit court, which we will not enumerate here. Both of these sections were repealed by House Bill No. 1634, and new sections bearing the same numbers having little or no continuity with such repealed sections were enacted by House Bill No. 1634, effective January 2, 1979.

The Honorable Joe Moseley

Section 550.030, also referred to, is one of the three sections cited from the chapter relating to costs in criminal cases. Specifically, it provides that when the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and is unable to pay the costs, the county in which the indictment was found or information filed shall pay the costs, except such as were incurred on the part of the defendant. Likewise, § 550.040, also referred to in such section, provides that in all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; and in all other trials on indictments or information if the defendant is acquitted, the costs shall be paid by the county in which the indictment was found or information filed, except when the prosecutor shall be adjudged to pay them or it shall be otherwise provided by law.

Section 550.090, also referred to in § 483.617, also provides for the payment of costs by the county in certain cases resulting in discharge or acquittal.

It seems clear that the provisions of § 483.617, as enacted, literally relate solely to criminal cases which are "dismissed" after August 13, 1978, and provide that "no fees shall be chargeable against the counties or the city of St. Louis upon such dismissal." It seems obvious that §§ 550.030, 550.040 and 550.090 have provisions which refer to costs on acquittal and costs on conviction in criminal cases. It is also clear however that a "dismissal" of an action, as the term is used in § 483.617, is not the same as a conviction or an acquittal.

In light of the legislative history of § 483.617 we are of the view that the term "dismissal," as used in such section, must be narrowly construed so as to include only those criminal actions "dismissed" before the defendant is in jeopardy.

While we are of the view that some meaning should be given to the provisions of § 483.617, it is nevertheless our view that the effect of such section must be limited to such criminal case dismissals and cannot be extended to nullify the other provisions of statutes relating to costs upon conviction or acquittal such as those cited therein, §§ 550.030, 550.040 and 550.090, because the constitutional process does not allow the repeal of such provisions of such sections by mere reference. In light of the

The Honorable Joe Moseley

constitutional requirements respecting the legislative process, it is our view that § 483.617 must be narrowly construed and as so construed must be limited to cases "dismissed" and that the reference to other sections therein respecting costs on conviction and costs on acquittal are of no effect.

#### CONCLUSION

It is the opinion of this office that § 483.617, as enacted by House Bill No. 1634 of the 79th General Assembly, refers only to fees chargeable against the county upon dismissal of criminal cases and is ineffective insofar as it purports to nullify provisions of statutes relative to costs in criminal cases resulting in conviction or acquittal.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

June 22, 1979

OPINION LETTER NO. 141

Dr. Arthur L. Mallory  
Commissioner  
Department of Elementary and  
Secondary Education  
Jefferson State Office Building  
Jefferson City, Missouri 65101

Dear Dr. Mallory:

This letter is in response to your request for our review and certification of the State Board of Education's state plan for the administration of vocational education under the Vocational Education Amendments Act of 1968, as amended.

Our review has taken into consideration the Vocational Educational Act of 1963, P.L. 88-210, as amended; the Vocational Amendments Act of 1968, P.L. 90-576, as amended; the Education Amendments of 1976, P.L. 94-482; the applicable federal regulations; Article III, Section 38(a), Article IV, Section 15, and Article IX, Sections 1(b), 2(a), and 2(b), Missouri Constitution; Sections 161.092, 161.112, 161.122, and 178.430 through 178.580, RSMo 1978.

It is the opinion of this office that:

1. The Missouri State Board of Education is the state agency solely responsible for the administration of vocational education in Missouri and is, therefore, the "State Board" as that term is defined in 20 U.S.C. Section 1248(8);

2. The Missouri State Board of Education has the authority under state law to submit a state plan for the administration of vocational education;



Dr. Arthur L. Mallory

3. The Missouri State Board of Education has the authority to administer or supervise the administration of the foregoing state plan;

4. All provisions contained in the foregoing state plan are consistent with state law;

5. The Commissioner of the Missouri Department of Elementary and Secondary Education has been duly authorized by the Missouri State Board of Education to submit the foregoing state plan to the United States Commissioner of Education and to represent the Missouri State Board of Education in all matters relating thereto.

In conjunction with this letter opinion which constitutes our official certification of the application, we have completed the required certification forms.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal line extending to the right.

JOHN ASHCROFT  
Attorney General



*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

June 27, 1979

(314) 751-3321

OPINION LETTER NO. 144

The Honorable Gary L. Smith  
Representative, District 157  
325 East McCollum Street  
Dexter, Missouri 63841

Dear Mr. Smith:

This is in answer to your letter asking whether a "senior judge" is entitled to any additional pay other than his retirement pay when he serves as a judge in any of the courts of Missouri.

Section 26, Article V, of the Constitution of Missouri, provides in part as follows:

"3. Any retired judge, associate circuit judge or commissioner, with his consent, may be assigned by the supreme court as a senior judge to any court in this state or as a special commissioner. When serving as a senior judge he shall have the same powers as an active judge."

It is a well-established principle of law in this state that the rendition of services by a public officer is deemed to be gratuitous unless compensation therefor is provided by statute. Becker v. St. Francois County, 421 S.W.2d 779. We find no provision in the constitution or statutes of this state providing for compensation for a senior judge, when he serves in any court in this state, except the retirement compensation provided for by statute. It follows therefore that no payment can be made to such senior judges in addition to their retirement compensation.

The Honorable Gary L. Smith

We note that House Bill No. 922 was introduced in the first session of the 80th General Assembly and that such bill provided for payment for such senior judges during the period they actually serve on the various courts in the state of Missouri. However, House Bill No. 922 died in committee, and we deem it unnecessary to discuss the question of whether or not payment could be made to senior judges who served as judges of one of the courts of Missouri during the early months of 1979, if such bill had been passed.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", followed by a horizontal line.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

June 28, 1979

OPINION LETTER NO. 145

The Honorable Jerry E. McBride  
Representative, District 130  
Post Office Box 292  
Edgar Springs, Missouri 65462

Dear Sir:

This is in answer to your recent opinion request reading as follows:

"Is the County Court of a third class county such as Phelps County required to advertise for and accept, bids on group health insurance covering county employees when that insurance is partially paid for by county funds and partially paid for by employee contributions, and when the insurance plan is chosen by a vote of the employees?"

You further state:

"The insurance plan in question was chosen by a vote of county employees to switch from the prior plan to this specific plan during the term of said prior plan. The county had been using a Blue Cross insurance package when representatives of Equitable offered a plan for a substantially lower premium. The county court held a meeting of county employees and Equitable presented their coverage plan. The employees then voted to switch from Blue Cross to Equitable.

The Honorable Jerry E. McBride

The county pays 60% of the premium and the employees 40% of the premium. Participation in the plan is optional with each employee."

Section 49.277, RSMo 1978, provides as follows:

"1. The county court in all counties of the second and third classes and counties of first class not having a charter form of government as a part of the compensation of its employees may contribute to the cost of a plan, including a plan underwritten by insurance, for furnishing all or a part of hospitalization or medical expenses, life insurance, or similar benefits for its employees, and to appropriate and utilize its revenues and other available funds for these purposes.

"2. No contract shall be entered into by the county to purchase any insurance policy or policies pursuant to the terms of this section unless such contract shall have been submitted to competitive bidding and such contract be awarded to the lowest and best bidder."

Such section was made applicable to third class counties by Laws 1975-1976, page 611.

The provisions of subsection 2 of Section 49.277 are crystal clear.

In the case of Pedroli v. Missouri Pacific Railroad, 524 S.W.2d 882, the court said, I.c. 884:

"The primary rule of statutory construction is to ascertain the intent of the legislature. Missouri Pacific Railroad Company v. Kuehle, 482 S.W.2d 505, 509[3] (Mo.

The Honorable Jerry E. McBride

(1972). This legislative intent should be ascertained from the words used, if possible, and in doing so the words should be given their plain and ordinary meaning so as to promote the object and manifest purpose of the statute. *State ex rel. State Highway Commission v. Wiggins*, 454 S.W.2d 899, 902[5] (Mo. banc 1970). When the language of a statute is unambiguous and conveys a plain and definite meaning, the courts have no business to look for or to impose another meaning. *DePoortere v. Commercial Credit Corporation*, 500 S.W.2d 724, 727[1] (Mo. App. 1973). If a statute is unambiguous, a court should regard it as meaning what it says since the legislature is presumed to have intended exactly what it states directly. *DePoortere v. Commercial Credit Corporation*, supra at 727[2]."

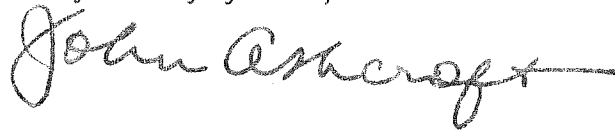
Subsection 2 of Section 49.277 makes it abundantly clear that no contract to purchase any insurance policy pursuant to the terms of Section 49.277 shall be entered into unless there is competitive bidding, and the contract is to be awarded the lowest and best bidder. It would be difficult to find clearer language than this as to the intent of the legislature. The fact that this contract was entered into when employees allegedly voted to "switch" from another insurance company would make no difference. It is obvious that a contract was entered into between the county and the insurance company to purchase insurance under the provisions of Section 49.277, and that the contract would be valid only if the statutory provisions relating to advertisement for bids were complied with. There is no doubt then that a contract in order to be valid under the provisions of Section 49.277 must be one that has been entered into after competitive bidding.

Insofar as the need for compliance with this provision is concerned, we note that, it is a well-established doctrine of law in this state that the members of a governing body who authorize and make illegal payments of public money are personally liable for the money so illegally expended. State v. Powell, 221 S.W.2d 508 (Mo. 1949).

The Honorable Jerry E. McBride

We do not attempt to decide whether the original contract for insurance coverage was valid, or whether if such contract was valid, the county could "switch" during the contract period but rule only that under the provisions of Section 49.277 any contract entered into under such section is invalid unless the competitive bidding requirements are followed.

Very truly yours,

A handwritten signature in dark ink, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

RECORDER OF DEEDS: Compensation of the recorders of deeds in second class counties and in third class counties where the offices of the clerk of the circuit court and recorder of deeds are separate, is provided for in Section 50.334, RSMo, as enacted by S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257 of the 79th General Assembly, effective at the beginning of such officers' terms, January 1, 1979.

August 16, 1979

OPINION NO. 147

The Honorable Roger B. Wilson  
Senator, District 19  
State Capitol Building  
Senate Post Office  
Jefferson City, Missouri 65101



Dear Senator Wilson:

This opinion is in response to your request asking:

"Which version of section 50.334, RSMo 1978, is controlling, the version enacted by S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257, 79th General Assembly, or the version enacted by H.B. 1634, 79th General Assembly?"

You also state:

"S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 and 1257 and H.B. 1634 enacted by the 79th General Assembly, established conflicting salary schedules for recorders of deeds in certain counties. The conflicting provisions are set forth in section 50.334, RSMo 1978."

Section 50.334, as enacted by S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257, provides in pertinent part:

"1. In all counties, except counties of the first class, having a population of less than five hundred thousand and an assessed valuation as prescribed in this



The Honorable Roger B. Wilson

section, each recorder of deeds, if his office be separate from that of the circuit clerk, shall receive as total compensation for all services performed by him an annual salary which shall be computed on a combination population-assessed valuation basis as set forth in the following schedule:

. . . .

"2. The repeal of section 59.606 and the repeal and reenactment of section 50.334 shall be effective December 31, 1978."

We have placed a comma in the first sentence of subsection 1 of Section 50.334, as enacted by S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257, after the language "except counties of the first class" to correct a printing omission in the Revised Statutes of 1978. With the comma inserted, it is clear that such recorders of deeds of first class counties are not within the provisions of such section.

We note that subsection 2 of Section 50.334, as enacted by S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257, provided that the repeal of Section 59.606, which allowed three thousand seven hundred dollars per year additional compensation to the recorder of deeds in each county of the second class and the recorder of deeds in each county of the third class wherein the office is separate from the office of circuit clerk for duties imposed by Section 59.605, RSMo, would be effective December 31, 1978.

We note parenthetically that Section 59.606 was not listed in the title or enacting clause or specifically repealed in the body of the senate substitute for House Bills 1121 & 1257, and it could be argued that it is still in effect because it was never expressly repealed. However, we believe that the provisions of Section 50.334 of S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257 have to be read as a whole, and if in

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fact subsection 2 of such section could not take effect, the remainder of the section would not be effective because it would not be severable. That is, it is our view that the legislature would not have enacted the compensation schedule of Section 50.334 of Senate Substitute No. 4 for House Bills 1121 & 1257 without intending the repeal of Section 59.606. See Section 1.140, RSMo. However, we presume the constitutionality of a statute and viewing the provisions of Section 50.334 as a whole supports the repeal of Section 59.606 by implication. Repeals by implication are not within the prohibition of Section 23, Article III. Dorris Motor Car Co. v. Colburn, 270 S.W. 339 (Mo. 1925).

Clearly the principal difference between Section 50.334, as enacted by the senate substitute for House Bills 1121 & 1257, and Section 50.334, as enacted by House Bill No. 1634, is that the compensation schedule, according to population and assessed valuation as contained in House Bill No. 1634, merely repeated the schedule which was provided for in repealed Section 50.334, RSMo Supp. 1975, whereas Section 50.334, as enacted by S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257, raised the compensation both according to population and according to assessed valuation.

Thus, Section 50.334 of House Bill No. 1634 contained the old repealed compensation schedule, and Section 50.334 of the senate substitute for House Bills 1121 & 1257 provided for an increase in compensation.

Despite the fact that such provisions of House Bill No. 1634 became effective January 2, 1979, whereas the salary schedule as contained in S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257 became literally effective December 31, 1978, it is our view that the clear intent of the legislature should govern. The compensation schedule contained in Section 50.334, as amended by the senate substitute for House Bills 1121 & 1257, should be given effect and the schedule contained in Section 50.334 of House Bill No. 1634 should be disregarded. In addition, the new matter with respect to the repeal of Section 59.606 contained in subsection 2 of Section 50.334 of S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257 should be given effect.

In reaching this conclusion we have given consideration to the fact that subsection 8 of Section B of House Bill No. 1634 provides:

The Honorable Roger B. Wilson

"In the event of the passage of an act at the Second Regular Session of the 79th General Assembly which provides for an increase or decrease in the amount of compensation to be paid to an official whose salary is specified in sections contained within this act, the amount of such increased or decreased compensation provided in any such separate enactment shall be effective from and after January 2, 1979, notwithstanding the provisions of this act."

Because of the provisions of Section 13 of Article VII of the Missouri Constitution, which prohibit an increase in an officer's compensation during such officer's term, the compensation provided for cannot become effective until the beginning of the terms of such recorders of deeds. Under Section 59.020, RSMo, in all counties of the second class, and in counties of the third class where the offices of clerk of the circuit court and recorder of deeds are separate, such recorder took office January 1, 1979, for a period of four years. His compensation under Section 50.334, as provided in S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257 of the 79th General Assembly, begins on that date.

#### CONCLUSION

The compensation of the recorders of deeds in second class counties and in counties of the third class where the offices of the clerk of the circuit court and recorder of deeds are separate is provided for in Section 50.334, RSMo, as enacted by S.S. No. 4 for S.C.S. for H.C.S. for House Bills 1121 & 1257 of the 79th General Assembly, effective at the beginning of such officers' terms, January 1, 1979.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,



JOHN ASHCROFT  
Attorney General

SCHOOLS:

Remedial, guidance, counseling, and other auxiliary services may be provided to any child after the regular school day, on weekends, or during the summer on public school premises or neutral sites, conducted by school district employees, regardless of whether the child regularly attends a public or parochial school. Secular instructional materials and/or equipment used in connection with the program may be provided to participating pupils. Bus transportation designed solely for the purpose of transporting pupils from their nonpublic schools to the public school site may not be provided.

August 7, 1979

OPINION NO. 148

Honorable Edward Sweeney  
Representative, District 84  
3670 Flora  
St. Louis, Missouri 63110



Dear Representative Sweeney:

This opinion is issued in response to your request for a ruling on the following question:

Does Missouri law permit the St. Louis School District to use federal funds to provide services to nonpublic school students on either public school or neutral sites at times other than during the regular school day?

The following facts pertain to your request:

For the past three years, the St. Louis School District has received federal funds under the provisions of the Emergency School Aid Act (ESAA), 20 U.S.C. §§ 1601, et seq., for the purpose of reducing minority group isolation in the schools. Such funds have been utilized for the support of the district's Magnet School Program. The Magnet School Program involves the establishment of a number of specialized elementary and secondary schools in the district, each having a particular area of emphasis (i.e. Math/Science, Performing Arts, Basic Education, etc.) and each having an integrated student population. The district has applied for an ESAA grant for the 1979-80 school year and that application is pending.

ESAA requires a local education agency that receives funds to provide for the participation of nonpublic school students and staff on an "equitable basis." 20 U.S.C. § 1609(a)(12). In meet-

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ing this requirement, the St. Louis School District had provided public school teachers on the premises of sectarian schools.

In response to a question concerning the constitutionality of this practice, this office issued a ruling in Opinion No. 181 (1979), which concluded:

"(1) Federal funds paid directly to the Board of Education of the City of St. Louis under the provisions of the Emergency School Aid Act (ESAA) constitute public funds which are subject to the spending proscriptions of the Missouri Constitution.

"(2) The Missouri Constitution prohibits the use of public school personnel paid with ESAA funds to provide teaching services to children attending sectarian schools on the premises of the sectarian schools during the regular school day."

Following that opinion, the district removed public school personnel from the sectarian schools and on January 18, 1979, forwarded a copy of the opinion to the Department of Health, Education, and Welfare (HEW) and requested HEW to issue a waiver of the non-public participation requirement. (A waiver is authorized where the local education agency is prohibited by law from providing for the equitable participation of nonpublic school children and staff. If a waiver is instituted by HEW, that agency is obligated to make other arrangements for such nonpublic participation. 20 U.S.C. § 1611(d)(1). These arrangements are commonly known as a "bypass.")

HEW has taken the position that activities and services other than the provision of teaching personnel on the premises of parochial schools during the regular school day may meet the "equitable participation" requirement of ESAA. HEW has expressed its reluctance to implement a bypass unless or until it is shown that these other activities or services are also prohibited by law, or unless these programs are shown in practice not to be equitable. The following are examples of services which could be provided:

(1) Remedial, guidance, counseling, and other auxiliary services either after school, on weekends, or during the summer months. Such services would be provided either on public school premises or on neutral sites and would be conducted by personnel employed by the district;

(2) The purchase and loan to nonpublic pupils of instructional materials and equipment of a type incapable of di-



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version to religious use. Such materials and equipment would be used and stored only in connection with the activities described above and only on public school or neutral sites;

(3) Bus transportation to nonpublic students to and from the public school or neutral site where the program described above takes place.

You have indicated that the district would be willing to provide any services to nonpublic school children which would meet the equitable participation requirement so long as those services are consistent with Missouri law.

At the outset, we note that we are not being asked, nor do we express any opinion as to whether or not any particular program or combination of services does in fact meet the equitable participation requirement of ESAA. This opinion will be addressed solely to the propriety of providing those services under the Missouri Constitution.

The feature characterizing this inquiry which distinguishes it from most precedents of the Missouri Supreme Court is that the educational services are not to be offered on the premises of parochial schools nor during the regular day. Thus, cases such as Paster v. Tussey, 512 S.W.2d 97 (Mo.Banc 1974), which prohibited the lending of textbooks to pupils for use in classes in parochial schools, is not applicable. In that case, the court discussed the "pupil-parent benefit theory," i.e., that the provision of textbooks to pupils in parochial schools could be considered solely as a service to pupils, and not one which would be "in aid of any . . . sectarian purpose," as proscribed by Article IX, § 8 of the Missouri Constitution. The court rejected that theory, stating, 512 S.W.2d at 104-105:

" . . . However, for the purposes of this case we have applied the 'pupil-parent benefit' theory, without deciding if we were at liberty to do so in light of the absolute separation of church and state doctrine evidenced throughout the Missouri Constitution, to the statute and Art. IX, § 8. Is the expenditure of funds to the pupil-parent in aid of a sectarian purpose? Which, in turn, calls for deciding whether or not an individual can have a sectarian purpose, or whether or not only a 'sect' can have such a purpose. When a sect, be it religious, political or otherwise, establishes a school for promoting and perpetrat-

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ing the tenets of the sect a sectarian purpose is evident. If such a purpose did not exist, it would be totally illogical for the sect to assume the financial burden of providing a school for its followers. In the instant case, most of the schools, denominated as private, have the worthy objective of providing pupils with an education at a place permeated with a religious atmosphere. To succeed, or even exist, such a school must have pupils (or parents thereof) who are adherents of the same sectarian purpose. Individuals, acting individually or collectively, can have and promote a sectarian purpose, and by attending a private school designed for such a purpose do, in fact, promote the sectarian objective for which Art. IX, § 8, prohibits the expenditure of any public funds."

In Special District for Education and Training of Handicapped Children of St. Louis County v. Wheeler, 408 S.W.2d 60 (Mo.Banc 1966), the court examined a practice by which parochial school pupils were released during part of their school day to receive speech therapy in buildings maintained by the public school district. The court expressly invalidated the practice of providing publicly paid speech therapists to the pupils on parochial school premises as a violation of Article IX, § 5 of the Missouri Constitution, but its rejection of the "release-time" practice was based not on the Constitution, but rather on an interpretation of the state's compulsory attendance laws, concluding that those statutes require the child to attend one school, public or private, for the minimum six hour school day. The court expressly declined to address the validity of a program which provided the speech therapy services to pupils enrolled in parochial schools where the services were offered on public school sites outside the regular school day.

That is the question we must address here. The Wheeler case, supra, by invalidating the "release-time" practice on compulsory attendance grounds rather than constitutional grounds leads us to believe that the elimination of the compulsory attendance factor (by providing services outside the regular school day) is sufficient to validate the provision of the ESAA services described above.

We do not believe that the characterization of a child as a "public school pupil" or a "parochial school pupil" retains significance during hours which do not constitute the statutorily defined school day. Although the court indicated in Paster v. Tussey

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that aiding a pupil attending a parochial school does promote a sectarian purpose, there is no basis for concluding that such children promote that purpose by virtue of their participation in any other activities (educational or otherwise) beyond their school attendance. A child is neither a public school child nor a private school child outside the regular school day and away from the premises of a sectarian school. To conclude otherwise would mean, for example, that a public library could not show an educational film in the evenings which would be viewed by pupils enrolled in parochial schools because the expenditure of public funds for such an activity would aid a sectarian purpose by aiding the child. We therefore conclude that when a public school district offers programs or services on premises owned or maintained by them, and such programs are open to any child (public or private) who is eligible and who desires to participate, there is no aid to a sectarian purpose, Article I, § 7, and Article IX, § 8 of the Missouri Constitution, and the expenditure of funds for those services is a public school purpose, Article X, § 1, and Article IX, §§ 1(a) and 5 of the Missouri Constitution.

We believe, however, that the transportation of pupils from parochial schools to the public sites where the programs take place has been disapproved by the court. In Mallory v. Barrera, 544 S.W.2d 556, 562 (Mo.Banc 1976), the court discussed briefly some practices under Title I, stating:

"[6] As to defendants' counterclaim, there is evidence (1) that 'Title I funds are used [by the state] to provide certain textbooks and library books and reading materials sent in to the nonpublic schools \* \* ' and (2) that Title I funds have been approved by the state for use 'to transport the nonpublic school child from the nonpublic school to the public school for \* \* \* after school services or Saturday services \* \* \*.' Clearly, the use by the state of public funds to provide textbooks (Paster v. Tussey, 512 S.W.2d 97, 104 (Mo. banc 1974)) for use in parochial schools, or to provide transportation (Mo.Const. Art. IX, § 8; McVey v. Hawkins, 364 Mo. 44, 258 S.W.2d 927 (Mo.banc 1953)) for parochial school students, is impermissible under the constitution of this state."

Although we are not dealing here with textbooks or materials "sent in" to the nonpublic schools, we are faced with the court's explicit ruling that public funds may not be used to transport



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children from the nonpublic school to the public school for after school and Saturday programs. This does not prohibit transporting children from their homes or from sites other than non public schools to ESAA programs at public or neutral sites.

#### CONCLUSION

Based on the foregoing, we conclude that remedial, guidance, counseling, and other auxiliary services may be provided to any child after the regular school day, on weekends, or during the summer on public school premises or neutral sites, conducted by school district employees, regardless of whether the child regularly attends a public or parochial school. Secular instructional materials and/or equipment used in connection with the program may be provided to participating pupils. Bus transportation designed solely for the purpose of transporting pupils from their nonpublic schools to the public school site may not be provided.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Sheila K. Hyatt.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", written in a cursive style.

JOHN ASHCROFT  
Attorney General

SCHOOLS:

1. A school district which had a term of less than 180 days and less than 174 days of actual pupil attendance may remain eligible for state aid providing it has scheduled two-thirds as many make-up days as were lost the previous year due to inclement weather if it makes up all of the first eight days missed plus one-half of the days missed in excess of eight. 2. The term "inclement weather," as found in § 171.033, RSMo 1978, does not include uncomfortably hot days. 3. A school district may make up days lost because of inclement weather by extending the school day by one-half hour as provided in § 160.041.2, RSMo 1978, in lieu of the scheduled make-up days. 4. Under § 160.041, RSMo 1978, a school district may not operate its schools on a "snow schedule" by beginning daily sessions one hour later than usual and dismissing one hour earlier than usual for a period of time delineated in advance.

September 20, 1979

OPINION NO. 149

Dr. Arthur L. Mallory  
Commissioner  
Department of Elementary  
and Secondary Education  
P. O. Box 480  
Jefferson City, Missouri 65102

Dear Commissioner Mallory:

This official opinion is issued in response to your request for a ruling on the following four questions:

1. May a school district have a term of less than 180 days with less than 174 days of actual pupil attendance without jeopardizing its eligibility for state aid providing it has scheduled two-thirds as many make-up days as were lost the previous year due to inclement weather if all of the first eight days lost due to inclement weather are made up plus one-half of those missed in excess of eight?
2. Does the term "inclement weather" as found in section 171.033, RSMo, 1978 include days when it is uncomfortably hot?

Dr. Arthur L. Mallory

3. May a school district make up days lost because of inclement weather by extending the regular school day by one-half hour in lieu of using the scheduled make-up days?
4. Is it permissible under provisions of section 160.041, RSMo, 1978 for a school district to operate its schools on a "snow schedule" by beginning daily sessions one hour later than usual and dismissing one hour earlier than usual thereby providing for a school day of four hours?

I

Your first question is whether a school district which, in the previous year, has had less than the statutory minimum number of days in the school term and of actual pupil attendance resulting from inclement weather, can be eligible for state aid in the upcoming year if certain guarantees are built into the upcoming year's calendar. For the reasons stated below, it is the opinion of this office that such a district, providing it meets certain statutory requirements, can remain eligible for state aid.

The school term is required to be least 180 days by § 163.021, RSMo 1978. Section 171.031, RSMo 1978, requires a minimum of 174 days of actual pupil attendance. Due to inclement weather, many school districts in the state did not hold school for the minimum number of days in the 1978-79 school year. Thus, they would be ineligible to receive state aid for the 1979-80 school year unless they meet the requirements of § 171.033 of Senate Bill No. 954 of the 79th General Assembly.

Such section provides as follows:

Beginning with the 1978-79 school year, no school district shall be exempt from any requirement to make up any days of school lost or canceled due to inclement weather, unless that school district schedules at least two-thirds as many make-up days for a school year as were lost in the previous school year, which days shall be in addition to the school calendar days required for a school term by Section 171.031. A school district shall be required to make up all of the

Dr. Arthur L. Mallory

first eight days of school lost or canceled due to inclement weather and half the number of days lost or canceled in excess of eight days.

The language of this section provides an exemption from the statutory minimum day requirements for school districts which have built certain guarantees into their upcoming year's calendar. Thus, a district, which did not have the requisite number of days due to inclement weather in the year just past, would nevertheless be eligible for state aid in the upcoming year if its calendar for the upcoming year reflects that it has scheduled at least two-thirds as many make-up days as were lost in the previous year due to inclement weather. A school district must make up all of the first eight days plus one-half of the days missed in excess of eight in order to remain qualified.

Giving the words of this statute their plain and ordinary meaning, it is apparent that the exemption was intended to apply in the situation presented by your first question. Furthermore, the title of Senate Bill No. 954 reveals exactly such an intent. The bill is titled as follows:

AN ACT to prevent the loss of state aid  
for school districts operating schools  
for less than the statutory minimum  
number of school days, with an emergency clause.

## II

Your second question is whether the phrase "inclement weather," as found in § 171.033, RSMo 1978, includes extraordinarily hot days. The answer, in our opinion, is no.

The primary rule of statutory construction requires us to ascertain the intent of the legislature from the language used and to consider words in their plain and ordinary meanings. State v. Kraus, 530 S.W.2d 684 (Mo. banc 1975), and State ex rel. Dravo Corporation v. Spradling, 515 S.W.2d 512 (Mo. 1974). The word "inclement" is ordinarily understood to mean stormy or violent weather, in particular, winter snow storms and ice storms. This coincides with the first definition of the term given in Webster's New World Dictionary, 2nd College Edition, 1976. This definition would not include hot weather.

That the legislature contemplated such a definition of the term "inclement weather" is apparent from the language of the emergency

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clause contained in Senate Bill No. 954 which enacted the current § 171.033, RSMo 1978. The emergency clause (Section A) reads as follows:

Because of the large number of days lost by schools this winter due to the unusually severe winter and because of the necessity for students and teachers in affected schools to begin summer school at times before the school year would end if the district was forced to make up the lost days, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval. (Emphasis added)

From this it is apparent that the legislature did not intend to provide an exemption for certain days on which school was not held due to unusually hot weather.

### III

Your third question concerns the use of the one-half hour extension of the school day provided in § 160.041.2, RSMo 1978, in conjunction with, or instead of, the scheduled make-up days provided for in § 171.033, RSMo 1978, discussed above. Each of these sections provides a method by which time lost due to inclement weather can be made up. Thus, both sections deal with the same subject, and, are in pari materia.

Statutes which are in pari materia must be read together and, if possible, construed harmoniously to give effect to both. See City of Raytown v. Danforth, 560 S.W.2d 846 (Mo. banc 1977), and State v. Kraus, supra. This principle applies even when the sections involved are in separate chapters.

In this case, it is simple to construe the two statutes in harmony with one another, and to give effect to both. That is, a school district may make up days lost to inclement weather by extending the school days by one-half hour or by making up entire days at the end of the year, or a combination of the two. In no way are these two sections inconsistent with each other. They simply provide the school board with a choice as to how the required number of days in the school year will be provided.

IV

Your fourth question concerns the legality of a "snow schedule" in which a school would begin classes one hour later than normal and dismiss classes one hour earlier than usual, providing for a school day of four hours. We understand your question to be concerned with an advance scheduling of four hour days for a period of time delineated in advance. It is the opinion of this office that such procedure is not within a fair interpretation of the statutory scheme provided by the legislature.

Section 160.041.1, RSMo 1978, provides in part:

[I]f any school is dismissed because of inclement weather after school has been in session for four or more hours that day shall count as a full day and if school has been in session for two hours or more and less than four hours that session shall be counted as one-half day . . . .

If, in the judgment of school officials, it is necessary to dismiss school earlier than the scheduled dismissal time because of inclement weather, § 160.041, RSMo 1978, provides some credit for the part of the day completed. This section is not intended to allow a school to begin later and end earlier on a regular basis as a part of a "snow schedule." We note that there is no statutory requirement that schools begin or end their regular school day at any particular time.

The entire scheme of statutory minimums for the school term, average daily attendance, and the number of hours in a school day (which is contained in § 160.041, RSMo 1978) is a guarantee to the children of this state and their parents that a minimum number of hours in a classroom under the guidance of trained teachers will be provided. It is our opinion that a "snow schedule" is not within the intention of the legislature in providing this guarantee.

CONCLUSION

Based upon the foregoing, it is our conclusion that:

1. A school district which had a term of less than 180 days and less than 174 days of actual pupil attendance may remain eligible for state aid providing it has scheduled two-thirds as many make-up days as were lost the previous year due to inclement weather if it makes up all of the first eight days missed plus one-half of the days missed in excess of eight.



Dr. Arthur L. Mallory

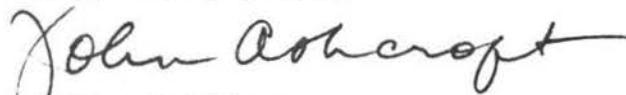
2. The term "inclement weather," as found in § 171.033, RSMo 1978, does not include uncomfortably hot days.

3. A school district may make up days lost because of inclement weather by extending the school day by one-half hour as provided by § 160.041.2, RSMo 1978, in lieu of the scheduled make-up days.

4. Under § 160.041, RSMo 1978, a school district may not operate its schools on a "snow schedule" by beginning daily sessions one hour later than usual and dismissing one hour earlier than usual for a period of time delineated in advance.

The foregoing opinion, which I hereby approve, was prepared by my assistant, J. Kent Lowry.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft".

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

65101

(314) 751-3321

August 6, 1979

OPINION LETTER NO. 152

The Honorable John L. Goldman  
State Representative, District 102  
8505 Elsa  
St. Louis, Missouri 63123

Dear Mr. Goldman:

This letter is in response to your question asking:

"Does section 321.015, RSMO prohibit an employee of a fire district from serving as an elected director of another fire district, even if he was elected before the law took effect?"

You also state:

"A Mr. J. M. Kaufman is an employed firefighter with the Fenton Fire Department, located in St. Louis County, and is an elected director of the Gardenville Fire District, serving a two year term. He was elected on April 4, 1978 and will be up for election in April 1980. A [sic] Mr. Kaufman grandfathered in and if the answer is yes, will he then be ineligible to run for office in 1980? I informed Mr. Charles Godiswitz, the attorney for the Gardenville Fire District, of my findings in regard to 321.015. He then presented it to the Board of Directors of Gardenville and Mr. Kaufman refused to resign. I then informed Mr. Godiswitz of my intention to file for an Attorney Generals opinion on the matter and that we would go from there."



The Honorable John L. Goldman

Section 321.015, RSMo, to which you refer provides:

"No person holding any lucrative office or employment under this state, or any political subdivision thereof as defined in section 70.120, RSMo, shall hold the office of fire protection district director under this chapter. When any fire protection district director accepts any office or employment under this state or any political subdivision thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary or expenses as fire protection district director. This section shall not apply to members of the organized militia, of the reserve corps, public school employees and notaries public. The term 'lucrative office or employment' does not include receiving retirement benefits for service rendered to a fire protection district, the state or any political subdivision thereof."

Your first question asks whether Mr. Kaufman can presently hold the position of Fire Protection District Director of the Gardenville Fire District and also be employed with the Fenton Fire Department as a firefighter. You have also stated that Mr. Kaufman has been called upon to resign and that he has refused to do so.

It is our view, with respect to your first question, that the question posed is in a litigation posture. That is, the courts of this state have not interpreted § 321.015 with respect to the type of situation that you present, and it is clear that an actual controversy exists concerning Mr. Kaufman's right to serve in both capacities. We wish to point out in this respect that this office does not perform a judicial function in the writing of official opinions. See Gershman Investment Corp. v. Danforth, 517 S.W.2d 33 (Mo. Banc 1974). Therefore, it is our view that we must respectfully decline to issue an opinion with respect to your first question.

The Honorable John L. Goldman

We wish to additionally point out, with respect to your first question, that a conclusion with regard to the status of such an individual is clouded by the opinion of the Missouri Supreme Court in State ex rel. Hall v. Vaughn, 483 S.W.2d 396 (Mo. Banc 1972), in which the Supreme Court refused to apply a constitutional mandatory retirement provision applicable to certain judges to judges who were retained in office before such provision became effective.

With respect to your second question which is raised in your statement of facts asking whether such an individual could run for office again, the statute would prohibit the holding of both such office and such employment. It is clear that the City of Fenton is a political subdivision as defined under § 70.120, RSMo, which defines a "political subdivision" as "any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied;"

It is therefore our view that, under the first sentence of § 321.015, no such person holding any lucrative office or employment under such a political subdivision could also hold the office of Fire Protection District Director under Chapter 321, RSMo. Therefore, even if a court ruled in Mr. Kaufman's favor with respect to his right to remain in office until the end of his term, it is apparent that he could not again hold such office while at the same time maintaining such employment.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a stylized flourish at the end.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

JOHN ASHCROFT  
ATTORNEY GENERAL

65102

(314) 751-3321

November 7, 1979

OPINION LETTER NO. 155  
(Answered by Letter-Wood)

Honorable John T. Russell  
Senator, District 33  
Rt. #1  
Lebanon, Missouri 65536

Honorable Morris Westfall  
Representative, District 133  
Rt. #2  
Halfway, Missouri 65663



Gentlemen:

This is in response to your request for an official legal opinion on what we understand to be the following question pertaining to the Local Airport - State Financial Assistance Program, authorized by §§ 305.230 through 305.234, RSMo: Can the local sum for airport construction or improvement be expended in one fiscal year and the like sum from the state released in a subsequent fiscal year?

The statutes in question provide in the part we deem material for present purposes:

[C]ities . . . may purchase sites and construct and operate airports . . . and when any city . . . certifies to the governor that it has appropriated a specific sum for the aforesaid purpose . . . and is ready to proceed with the . . . construction or improvement of an airport, a like sum not exceeding twenty-five thousand dollars in any one fiscal year nor exceeding seventy-five thousand dollars in any consecutive five fiscal years may be allotted to the city, . . . from the

Honorable John T. Russell  
Honorable Morris Westfall

appropriation made for that purpose, . . . .  
Any number of separate appropriations may  
be made until the full sum as above stipu-  
lated is allotted. The sum shall be re-  
leased to the city . . . only after the  
department of transportation has certified  
to the governor . . . that the funds proposed  
are adequate to complete the project and that  
the project meets the requirements and recom-  
mendations of the department's state airport  
standards and plan. Each city, . . . may  
receive federal grants in addition to all  
other grants or funds made available under  
this section. § 305.230.

1. . . . In order to insure effective  
and efficient use of state funds to aid the  
cities, . . . in the operation, construction  
and improvement of airports [the department]  
shall develop and maintain a state airport  
plan.

2. The department shall also develop  
and maintain an 'approved airport design'  
. . . to assure . . . the best uses of state  
and local funds. § 305.233.

We believe a primary intention of this law is that the De-  
partment of Transportation administer the state funds to aid local  
airport construction or improvement in such a manner that such  
construction or improvement conforms to a high degree with the  
state airport plan and design standards. To further this goal,  
it would seem necessary that local airport construction or im-  
provement projects receive the Department's approval before they  
are actually undertaken, but once this condition is met, we see  
no reason why the Department cannot agree with the local entity  
to allot the state's like sum out of a future state fiscal year  
appropriation, even though the local entity's equivalent sum is  
appropriated or expended within the fiscal year that the project  
has been given the Department's approval.

Honorable John T. Russell  
Honorable Morris Westfall

The legislature has the power to appropriate public funds for expenditure in the discharge of previously incurred obligations or commitments resulting from the activities of state agencies then authorized by law. State ex rel. Smearing v. Thompson, 45 S.W.2d 1078 (Mo. banc 1932); Kleban v. Morris, 247 S.W.2d 832 (Mo. 1952). Prior opinions of this office have recognized this proposition. Atty. Gen. Op. No. 42, Howard, 7/24/47; Atty. Gen. Op. No. 49, Kirtley, 7/27/55; Atty. Gen. Op. No. 352, Bell, 10/9/62. Therefore, absent a specific limitation or restriction placed in the appropriation measure, we believe the Department of Transportation can expend funds appropriated for local airport assistance (e.g., \$ 8.150, H.B. No. 8, 80th General Assembly) for the support of projects previously approved by the Department for state financial assistance pursuant to §§ 305.230-233, RSMo.

Sincerely,

A handwritten signature in cursive script, reading "John Ashcroft", followed by a horizontal line.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

(314) 751-3321

65101

August 9, 1979

OPINION LETTER NO. 157  
(Answer by Letter-Klaffenbach)



The Honorable Gary G. Sprick  
Prosecuting Attorney  
Howard County  
Courthouse  
Fayette, Missouri 65248

Dear Mr. Sprick:

This letter is in response to your request for an opinion of this office asking whether the county hospital trustees have authority to purchase an existing clinic building and lease such clinic to a group of private physicians if such action is first approved by the voters of the county at an election.

In our Opinion No. 224-1968, copy enclosed, this office concluded that the county court and the county hospital board of trustees did not have the authority to furnish a building at a nominal cost for private physicians because of the prohibitions of § 25 of Art. VI of the Missouri Constitution prohibiting political subdivisions from granting public money or property to private individuals, associations or corporations.

In the question you pose, it is not clear whether or not the lease would be for a nominal amount or for fair value. Even assuming, however, that the lease was to be for fair value, it is our view that the board of trustees has no authority to purchase such a building with hospital funds and lease it to such a doctors' group. Such authority is neither expressly granted nor necessarily implied from those powers granted.

The Honorable Gary G. Sprick

We know of no provision allowing the voters to authorize such a transaction.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft". The signature is written in dark ink and is positioned above the printed name and title.

JOHN ASHCROFT  
Attorney General

Enclosure  
Op. No. 224-1968

*Attorney General of Missouri*

JEFFERSON CITY

65101

October 3, 1979

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

OPINION LETTER NO. 160

The Honorable Glenn H. Binger  
Representative, 41st District  
Rural Route 3  
Independence, Missouri 64057

Dear Mr. Binger:

This letter is in response to your request for an official opinion of this office asking as follows:

Does R.S.Mo. Section 88.834 provide authority for a fourth class city to establish a district for storm sewers.

Section 88.832, RSMo, provides:

The governing body of any municipality shall have power to cause a general sewer system to be established, which shall be composed of four classes of sewers, to wit: public, district, joint district, and private sewers. Public sewers shall be established, along the principal courses of drainage, at such time, to such extent, of such dimensions, and under such regulations as may be provided by ordinance. These may be extensions or branches of sewers already constructed or entirely new throughout, as may be deemed expedient. The municipality may levy a tax on all property made taxable for state purposes over the whole municipality to pay for the constructing, reconstructing and repairing of the work, which tax shall be called 'special public sewer tax' and shall be of the amount as may



The Honorable Glenn H. Binger

be required for the sewer provided by ordinance to be built; and the fund arising from the tax shall be appropriated solely to the constructing, reconstructing and repairing of the sewer.

Section 88.834, RSMo, provides:

District sewers shall be established for the districts created to be prescribed by ordinance, and shall connect with public, or other district or joint district sewers or with a natural course of drainage, as each case may be, and may be constructed with the main branch or discharge pipe wholly within or beyond the boundary of the district as the council shall determine. The district may be subdivided, enlarged or changed by ordinance at any time previous to the construction of the sewer therein; and more than one district sewer may be laid in a sewer district if deemed necessary by the governing body of the municipality for sanitary or other purposes. The governing body shall cause sewers to be constructed in each district whenever a majority of the property holders, residents therein, shall petition therefor, or whenever the governing body shall deem the sewers necessary for sanitary or other purposes, and the sewer shall be of such dimensions and materials as may be prescribed by ordinance and may be changed, enlarged or extended, and shall have all the necessary laterals, inlets, catch basins, manholes and other appurtenances.

Section 88.836, RSMo, provides for the apportionment of costs of the district sewer by means of a levy and assessment of a special tax by ordinance against each lot or piece of ground within the district.

The Honorable Glenn H. Binger

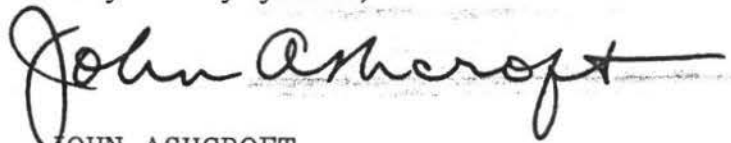
It is our understanding that the city attorney of the City of Blue Springs, the city in question, has indicated that it is his view that the language "sanitary or other purposes" contained in § 88.834 is sufficient authorization to extend the authority of that section to include storm sewers for the purpose of handling surface water from heavy rainstorms.

We are of the view that it is questionable that such a city has authority to establish a district for storm sewers. In Terminal R.R. Ass'n v. City of Brentwood, 230 S.W.2d 768 (Mo. 1950), the court referred to the previous enactments of §§ 88.832 and 88.834 as relating to "sanitary sewers" as opposed to sewers for the drainage of surface water under the provisions of a different statute which required railroads to construct sewers to facilitate the proper drainage of water in certain instances. While this case does not squarely rule the point which you ask, it is the only case which we are able to find which notes such a distinction.

It is our general understanding that such cities have not purported to have the authority to build drainage sewers under the authority of § 88.834 on which a special tax bill would issue under § 88.836. Assuming such information is correct, it is probably because drainage sewers are more likely to benefit the general public as opposed to those specifically benefited by sanitary sewers for which an assessment is authorized.

We call to your attention that this office does not perform a judicial function under § 27.040. Gershman Investment Corp. v. Danforth, 517 S.W.2d 33 (Mo. 1974). Therefore, it is our view that the city may only safely proceed by either litigating the matter to receive a court declaration as to the city's authority to proceed under such sections as desired or by appropriate legislative action to clarify the provision of such sections.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a stylized, sweeping flourish at the end.

JOHN ASHCROFT  
Attorney General

November 27, 1979

OPINION LETTER NO. 161  
(Answer by Letter-Klaffenbach)

The Honorable Philip R. Pruett  
Prosecuting Attorney  
Mississippi County  
Post Office Box 449  
Charleston, Missouri 63834

Dear Mr. Pruett:

This letter is in response to your request for an opinion from this office asking:

Where more than one warrant is served at the same time and at the same location by the Sheriff or a Deputy Sheriff, should each arrestee be required to pay as part of the costs of the case an amount which is normally collected to reimburse the officer for mileage pursuant to Section 57.430, RSMo?

You also stated:

In Attorney General opinion letter No. 35 directed to me and dated May 16, 1979, you indicate that the Sheriff can not claim mileage for serving more than one warrant where several warrants are served at the same time at the same location. In the past, in servicing a State weight station on Interstate 57 in Mississippi County, the Sheriff or a Deputy has gone to the weight station from the Mississippi County Courthouse and various other locations to serve a warrant on violators. If such a procedure is reinstated [sic] and in view of your opinion, the question arises regarding whether or not every traffic violator should have to pay as costs an amount sufficient to reimburse the Sheriff or the Deputy for mileage

The Honorable Philip R. Pruett

expense in cases where there is more than one traffic offender at the same time and same location.

As far as the reimbursement to the Sheriff or the Deputy, it will make no practical difference under your opinion since they will be reimbursed only for the actual number of miles traveled. In a case where there are two, three, four or five or more violators, then should one or all be required to pay as costs an amount for mileage expense incurred by the Sheriff or the Deputy? If only one offender is charged, it would seem to be unfair to that person.

Mississippi County is a Third Class County.

We enclose a copy of our Opinion No. 205-1974, which illustrates the difference between Sections 57.300 and 57.430, RSMo. Since Section 57.300 has not been amended since that opinion was issued, we will not repeat it here. See Vernon's "Missouri Legislative Service" 1979, page 15 (S.B. No. 316, 80th General Assembly), for the recent amendments to Section 57.430.

Because Section 57.300 is a fee statute and not a reimbursement or compensation statute, it is applicable to the question that you ask. Although the provisions of Section 57.300 do not clearly answer your question, it is our interpretation of that section that, except where more than one writ is served in the same cause on the same trip, such mileage should be charged for the service of each such warrant when served more than five miles from the place where the court is held based on the actual distance and irrespective of whether or not other warrants in other cases are served at the same time.

In reaching this conclusion, we are aware of the holding of the Missouri Court of Appeals, Western District, in Myers v. Buchanan County, 493 S.W.2d 696 (1973), in which the court, in passing on provisions of the county budget laws, stated that Section 57.300 provides for mileage reimbursement to the sheriffs

The Honorable Philip R. Pruett

in criminal cases. While we respect the statement of that court, we are of the view that this description of Section 57.300 which was only dictum was inadvertent and incorrect. We believe that the statement of the court should not and will not be followed in future cases in which the precise issue is whether or not Section 57.300 is a nonretainable fee statute or a mileage reimbursement statute.

Very truly yours,

JOHN ASHCROFT  
Attorney General

Enclosure  
Att'y Gen. Op.  
No. 205-1974

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

August 13, 1979

OPINION LETTER NO. 162  
(Answer by Letter - Lowry)

Dr. Arthur L. Mallory, Commissioner  
Department of Elementary & Secondary Education  
Jefferson State Office Building  
Jefferson City, Missouri 65101



Dear Dr. Mallory:

This letter is in response to your request for our review and certification of the State Board of Education's "Three-Year Interim State Plan for Vocational Rehabilitation Services under Section 101 of the Rehabilitation Act of 1973, as amended."

Our review has taken into consideration the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701, et seq., and the regulations promulgated pursuant thereto, 45 C.F.R. §§ 1361, et seq. In addition, we have taken into consideration Article III, Section 38(a), Missouri Constitution; Chapter 161, RSMo 1978, and Sections 178.590-178.630, RSMo 1978.

Based on the foregoing, we hereby certify that the Missouri State Board of Education is the state agency administering or supervising the administration of education and vocational education in the state of Missouri and is, therefore, qualified to be "the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency . . ." in accordance with the provisions of 45 C.F.R. § 1361.6.

Very truly yours,

*John Ashcroft*

JOHN ASHCROFT  
Attorney General

August 16, 1979

OPINION LETTER NO. 164  
(Answer by Letter - Burns)

Dr. Arthur L. Mallory  
Commissioner of Education  
Department of Education  
6th Floor, Jefferson Building  
Jefferson City, Missouri 65101



Dear Dr. Mallory:

We have your request for an opinion of this office asking for an interpretation of the provisions of § 164.021, RSMo, which provide that the voter approved levy increase be certified by the clerk of the district to the clerk of the court of the proper county who "on receipt thereof, shall assess the amount so certified, effective as of September twentieth next following, against all taxable property of the school district as provided by law."

Similarly, § 164.041, RSMo, provides that the rate legally authorized by the voters of the district "as of September twentieth of that year" will be assessed by the county clerk against all taxable property in each district.

You are aware of course that we issued Opinion No. 167-1978 concerning a similar but not identical provision contained in § 67.110, RSMo. We understand that you have a copy of that opinion, and we have not enclosed it herewith. All considered, however, we find that there are dissimilarities between the provision which we considered in that opinion and the provisions in question here. As a result, the conclusion we reached in that opinion is not necessarily applicable here.



Dr. Arthur L. Mallory

We find no court decisions which help us in interpreting the provisions of §§ 164.021 or 164.041, and we do not believe that we should speculate in this instance as to the result that a court might reach in interpreting such provisions. Clearly, this office does not perform a judicial function. See Gershman Investment Corp. v. Danforth, 517 S.W.2d 33 (Mo. 1974). Therefore, it seems clear that the school district's only way to determine the law on this matter would be to obtain a decision of a court of law as to whether or not such provisions of §§ 164.021 and 164.041 are mandatory or directory.

We conclude that a formal opinion regarding this subject, in these premises, should not issue under § 27.040, RSMo, and we therefore respectfully decline to issue such an opinion.

Very truly yours,

JOHN ASHCROFT  
Attorney General

C. B. BURNS, JR.  
Assistant Attorney General



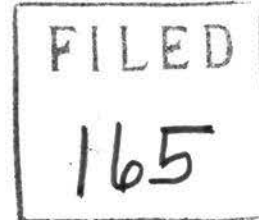
*Attorney General of Missouri*

JEFFERSON CITY

65102

JOHN ASHCROFT  
ATTORNEY GENERAL

November 13, 1979



(314) 751-3321

The Honorable Frank Bild  
State Senator, 15th District  
11648 Gravois  
St. Louis, Missouri 63126

OPINION LETTER NO. 165  
(Answer by Letter-Lowry)

Dear Senator Bild:

This opinion is issued in response to your request for a ruling on the following question:

Would the rights of a teacher be violated if given an involuntary assignment for the approaching school year involving the transfer from the teaching of physical education to the teaching of science, if such teacher has a master's degree in physical education and has been employed as a physical education teacher for the past 23 years and who has a minor in science but has never taught the course, as provided in Section 168.124(2), RSMo 1978?

We understand that the teacher in question is duly certified to teach science. Absent a contractual provision otherwise, the local school board has the authority to assign a teacher to teach in a class for which he or she is certified. See Harrisburg R-VIII School District v. O'Brian, 540 S.W.2d 945 (Mo.App., K.C.D. 1976).

Section 168.124 is applicable when a local school board, by reason of a decrease in pupil enrollment, school district reorganization or the financial condition of the school district, has to place teachers on leave of absence. When this occurs, subsection (2) of said statute requires that a permanent teacher who is retained on the basis of merit is to teach a course of study within that teacher's field of specialization.

TO: The Honorable Frank Bild

It is the opinion of this office that "field of specialization" refers to those courses the teacher is certified to teach. Therefore, as long as the teacher in question is teaching a course in which he or she is certified, there is no violation of § 168.124(2), RSMo 1978.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John Ashcroft", written in dark ink.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY

(314) 751-3321

65101

September 25, 1979

OPINION LETTER NO. 174

The Honorable Stephen R. Sharp  
Prosecuting Attorney  
Dunklin County  
Post Office Box 622  
Kennett, Missouri 63857

Dear Mr. Sharp:

This letter is in response to your question asking whether county hospitals organized under the provisions of §§ 205.160, RSMo, et seq., are required to share proportionately the costs of elections held on "municipal election day."

Section 115.065, RSMo, which relates to the sharing of election costs under certain circumstances as therein provided pertains to political subdivisions or special districts as defined. "Political subdivision" is defined in subsection (18) of § 115.013, RSMo, as a county, city, town, village, or township of a township organization county. "Special district" is defined under subsection (24) of § 115.013, RSMo, as a school district, water district, fire protection district or other district formed under the laws of Missouri to provide limited, specific services.

In our Opinion No. 224-1975, copy enclosed, we concluded that the state auditor is obligated to include county hospitals established pursuant to §§ 205.160 to 205.340, RSMo, within the scope of his audit of counties containing such an institution because such a county hospital is not a political subdivision of the state or a special district.

We therefore conclude that such a county hospital is neither a political subdivision nor a special district as defined in § 115.013, RSMo, and therefore is not within the provisions of § 115.065 with respect to the sharing of such

The Honorable Stephen R. Sharp

election costs. We know of no other statute which authorizes or requires the county hospital to share such costs.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", with a long horizontal stroke extending to the right.

JOHN ASHCROFT  
Attorney General

Enclosure  
Op. No. 224-1975

CONSTITUTIONAL AMENDMENT: Neither the provisions of Art. VII,  
PENSIONS: § 14, Mo. Constitution (as amended  
in 1978), nor the provisions of  
C.C.S. No. 2 for H.B. No. 130 of the  
80th General Assembly, both of which require actuarial evaluation  
of certain public retirement plan changes which increase benefits  
apply to a proposed, but not yet introduced, house joint resolution  
which would purport to amend Art. VI, § 25, of the Missouri  
Constitution to allow certain counties and municipalities to provide  
for the payment of periodic cost of living increases in pension  
and retirement benefits to law enforcement and fire personnel.

October 10, 1979

OPINION NO. 175

The Honorable Truman E. Wilson  
Senator, District 34  
Room 221, Capitol Building  
Jefferson City, Missouri 65101

Dear Senator Wilson:

This opinion is in response to your question asking:

Does a proposed constitutional amendment authorizing legislative changes in any public jurisdiction retirement plan require an actuarial evaluation to meet the requirements of HB 130 or is such actuarial statement required only on enabling legislation.

You also state that:

A proposed house joint resolution submitting a constitutional amendment to the voters would authorize increases in benefits to retired employees in Greene County.

You enclose a copy of a proposed house joint resolution which would amend Art. VI, § 25, Mo. Constitution (1945), which relates to limitations on the use of credit or public funds by local governments and adds to the last sentence thereof the following:

and except also, any county of the first class not having a charter form of government and not located adjacent to a county of the first class having a charter form of government and any city located within such county may provide for the payment

The Honorable Truman E. Wilson

of periodic cost of living increases in  
pension and retirement benefits paid under  
this section to law enforcement and fire  
personnel.

House Bill No. 130 to which you refer is C.C.S. No. 2 for H.B. No. 130, 80th General Assembly, with an emergency clause, presently effective.

Such bill is in implementation of Art. VII, § 14 (as amended in 1978), which we quoted and discussed generally in Op. Atty. Gen. No. 65, Tinnin, Feb. 6, 1979 (Mo.), copy enclosed.

In the interests of brevity, we will not quote from the pertinent portions of C.C.S. No. 2 for H.B. No. 130. However, we note that the phraseology "[a] substantial proposed change" as such term is defined in subsection (3) of § 1 of that bill refers to, among other things, a proposed change in future plan benefits. Section 2 of the bill refers to the legislative body or committee thereof which determines the amount and type of plan benefits to be paid. Section 3 thereof refers to the situation when the general assembly is the legislative body responsible for authorizing a substantial proposed change in plan benefits. Section 4 thereof concerns when a political subdivision or instrumentality of the state is the legislative body responsible for making a substantial proposed change in benefits.

The proposed amendment to the Constitution, which we have quoted above in pertinent part, does not have the effect of making a change in future plan benefits since it merely authorizes certain action by such political subdivisions as an exception to the general provisions of Art. VI, § 25, of the Constitution.

We are therefore of the view that such proposed constitutional amendment authorizing certain local legislative changes in certain public retirement plans does not come within the requirements of C.C.S. No. 2 for H.B. No. 130.

Further, we are of the view that since Art. VII, § 14, refers only to the legislative body which stipulates by law the amount and type of retirement benefits to be paid, such proposed constitutional amendment to Art. VI, § 25, of the Missouri Constitution does not come within the requirements of Art. VII, § 14, of the Missouri Constitution, as amended.

The Honorable Truman E. Wilson

This office does not rule in this opinion any question except the precise question asked. That is, this office rules only on the question of whether an actuarial evaluation is required. We do not rule whether the proposed amendment would be applicable to persons retired before the effective date of the amendment, and we do not rule on any other question relating to the proposed amendment.

#### CONCLUSION

It is the opinion of this office that neither the provisions of Art. VII, § 14, Mo. Constitution (as amended in 1978), nor the provisions of C.C.S. No. 2 for H.B. No. 130 of the 80th General Assembly, both of which require actuarial evaluation of certain public retirement plan changes which increase benefits apply to a proposed, but not yet introduced, house joint resolution which would purport to amend Art. VI, § 25, of the Missouri Constitution to allow certain counties and municipalities to provide for the payment of periodic cost of living increases in pension and retirement benefits to law enforcement and fire personnel.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

JOHN ASHCROFT  
Attorney General

October 12, 1979

OPINION LETTER NO. 177  
(Answer by Letter-Klaffenbach)

The Honorable Truman E. Wilson  
Senator, District 34  
Committee on State Fiscal Affairs  
State Capitol, Room 132  
Jefferson City, Missouri 65101



Dear Senator Wilson:

This letter is in response to your correspondence of August 22, 1979, in which you asked for a review of Op. Atty. Gen. No. 152, Sikes, March 27, 1974, and Op. Atty. Gen. No. 195, Keyes, December 28, 1977, both of which deal with the subject of transfer of appropriations. In view of the importance of the question raised by your correspondence, we have chosen to answer you by an official opinion letter of this office.

In Op. Atty. Gen. No. 152, Sikes, March 27, 1974, we concluded that the Director of Community Affairs may (1) use funds, appropriated for a specific purpose for one division of the department in House Bill No. 4, 77th General Assembly, for the same purpose in another division of the department; and (2) use funds appropriated for a specific purpose in House Bill No. 4 only for the purpose specified. In Op. Atty. Gen. No. 195, Keyes, December 28, 1977, we concluded that money appropriated to the Department of Consumer Affairs, Regulation and Licensing for the position of Human Resources Coordinator in the Division of Commerce and Industrial Development could be spent for the position of Coordinator of Human Resources in the Division of Administrative Services of the Department of Consumer Affairs, Regulation and Licensing.

In view of the fact that the language of these opinions has been broadly interpreted beyond the narrow fact situations to which they were directed, we are withdrawing such



The Honorable Truman E. Wilson

opinions. The withdrawal of such opinions may generate an opinion request directed to specific, current existing circumstances which may be answered by this office in a way that will eliminate the confusion which has surrounded the opinions we are withdrawing today.

Neither of the cited opinions was intended to authorize the transfer of appropriations from one departmental division to another division in the department or to the department itself for general purposes. Thus, the mere fact that there is an existing appropriation for personal services in one division does not authorize without regard to purpose the use of such appropriation for personal services in another division of the department or in the department generally.

We are prepared to respond to an appropriate opinion request dealing with a concise factual situation as expeditiously as possible in order that our view on this subject will be clarified as to whether such a transfer is legally permissible. However in doing so, we do not intend to abandon our long standing policy of declining to render opinions on numerous proposed appropriation items that may be pending at any particular time in the General Assembly.

Very truly yours,

JOHN ASHCROFT  
Attorney General

LIQUOR:

If an individual is convicted of supplying intoxicating liquor to a minor, there is no violation of § 311.060 RSMo or Regulation 11 CSR 70-2.140(13).

October 18, 1979

OPINION NO. 178

Mr. F. M. Wilson, Director  
Department of Public Safety  
621 East Capitol Avenue  
Jefferson City, Missouri 65101



Dear Mr. Wilson:

This opinion is issued in response to your request for a ruling on the following question:

If an individual is convicted (pursuant to Section 311.310, RSMo, 1978) of supplying intoxicating liquor to a minor, is he/she disqualified from holding a liquor license pursuant to Section 311.060, RSMo 1978, and disqualified from employment pursuant to Regulation 11 CSR 70-2.140 (13)?

Section 311.060 RSMo 1978 provides in pertinent part:

. . . no person shall be granted a license or permit hereunder . . . who has been convicted . . . of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor.

Regulation 11 CSR 70-2.140(13) provides in pertinent part:

No licensee shall employ on or about the licensed premises any person who has been convicted . . . of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor.

Both of these prohibitions are founded on a conviction for "the manufacture or sale" of intoxicating liquor. Contrastively, your question concerns a conviction for supplying intoxicating liquor to a minor. A conviction for the supply of intoxicating liquor to a minor is distinct from a conviction for selling intoxicating liquor to a minor.

CONCLUSION

It is the opinion of this office that, if an individual is convicted of supplying intoxicating liquor to a minor, there is no violation of § 311.060 RSMo or Regulation 11 CSR 70-2.140(13).

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James R. Cumbee.

Sincerely,

A handwritten signature in black ink, reading "John Ashcroft". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

JOHN ASHCROFT  
Attorney General

AUCTIONEERS: With respect to § 343.080, RSMo, and § 343.090, RSMo, concerning auctioneers' license fees, such fees under § 343.080, which are required to be paid to the county clerk for the issuance of auctioneers' licenses, are levies on behalf of the state, and the clerk should account to the state of Missouri for such fees. The county clerk's fee under § 343.090 is a separate fee of two dollars for the issuance of such auctioneers' licenses to be paid by the clerk into the county general revenue fund.

November 9, 1979

OPINION NO. 180

The Honorable John W. Briscoe  
Prosecuting Attorney  
Ralls County  
Post Office Box 446  
New London, Missouri 63459

Dear Mr. Briscoe:

This opinion is in response to your question asking:

Section 343.070 required the County Collector to grant an auction license to certain auctioneers.

Section 343.080 provides the amount of the fee for those licenses.

Section 343.090 provides that the County Clerk shall receive \$2.00 as an 'issuance fee'. That fee shall be paid in to the general revenue fund of the County. To whom or to what fund does the Collector or the County Clerk pay over the balance of the license fee received for the issuance of auctioneer licenses?

In your question you speak of the "balance of the license fee." It is our view, however, that the fees charged under § 343.080 are entirely separate from the clerk's fee which is charged under § 343.090. Clearly since § 343.090 directs that the two dollar fee shall be paid into the county revenue fund, there is no question as to the proper disposition of that fee.

As to the fee charged pursuant to § 343.080, the statute presently provides that certain specified fees will be levied upon every license to be paid to the county clerk before the

The Honorable John W. Briscoe

delivery thereof. Before that statute was amended in 1978, it provided that the fee would be paid to the collector.

Under the Laws of 1825, at pp. 160, et seq., relative to auctions and auctioneers, the then equivalent of the state auditor was denominated as the "auditor of public accounts." Under such laws, the collector was charged with all blank licenses not returned to the county court by the auditor of public accounts.

The Missouri Revised Statutes of 1855, at pp. 280, et seq., similarly provided that the auditor of public accounts would charge each collector with the licenses which were not returned to the county court. It seems clear from the context of both the Laws of 1825 and of 1855 that the license fee charges were made for the benefit of the state, with some exceptions not relevant here. Similarly, § 343.060, RSMo, in addition to providing that the county court shall settle with the collector for all blank licenses delivered to him and not accounted for and give him credit for all blank licenses returned and charge him for those not returned, also provides that the clerk shall, under the direction of the county court, certify to the state auditor the amount with which each collector stands charged who shall charge such collector therewith. Likewise, § 343.070, RSMo, provides that each collector shall grant any person, upon application and upon compliance with the requirements of Chapter 343, an auction license as provided for therein, and for that purpose fill up and countersign one of the blank licenses received from the county clerk.

We note that several portions of Chapter 343 were amended in 1978, including the amendments we have noted to § 343.080, and it is difficult to understand why §§ 343.060 and 343.070 were not amended to eliminate the provisions with respect to the auditor charging the collector with the amount the collector stands charged for such licenses because it was obviously the legislative intent that the county clerk would receive the amounts paid for such licenses and not the county collector. However, it is our view that these license fee provisions are in the nature of taxation provisions because no qualifications for licensing are set forth, and they have historically been referred to as taxes and levies. Therefore, we do not believe that the license fees paid under § 343.080, having historically accrued to the benefit of the state, could, without any other indication of legislative intent, accrue to the benefit of the county merely because such levies are paid to the county clerk.

The Honorable John W. Briscoe

While the legislature substituted payment to the county clerk instead of to the county collector by amending § 343.080, it is difficult to see how such a substitution would change the right of the state to the taxes thus collected. This appears to be more obvious in view of the fact that § 343.090 with respect to the payment of the two dollars as an issuance fee to the clerk is expressly required to be paid into county general revenue.

We conclude that the fee which the clerk collects under § 343.080 is to be paid to the state of Missouri and that the fee which the clerk collects under § 343.090 is to be paid into county general revenue.

#### CONCLUSION

It is the opinion of this office with respect to § 343.080, RSMo, and § 343.090, RSMo, concerning auctioneers' license fees that such fees under § 343.080, which are required to be paid to the county clerk for the issuance of auctioneers' licenses, are levies on behalf of the state, and the clerk should account to the state of Missouri for such fees. The county clerk's fee under § 343.090 is a separate fee of two dollars for the issuance of such auctioneers' licenses to be paid by the clerk into the county general revenue fund.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft". The signature is written in dark ink and is positioned above the printed name.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JOHN ASHCROFT  
ATTORNEY GENERAL

JEFFERSON CITY  
65101

(314) 751-3321

September 21, 1979

Paul R. Ahr, Ph.D., Director  
Department of Mental Health  
2002 Missouri Boulevard  
Jefferson City, Missouri 65101



Dear Dr. Ahr:

With reference to the state plan for persons with developmental disabilities, and amendments thereto, submitted under the provisions of the Developmental Disabilities Program, as amended by P.L. 95-602, to the best of my knowledge and belief:

1. The Department of Mental Health has authority to administer or supervise the administration of all or portions of the state plan for which it is responsible.
2. Nothing in this state plan is inconsistent with state law.

Sincerely,


JOHN ASHCROFT  
Attorney General

Statement by State Attorney General

With reference to the state plan for persons with developmental disabilities, and amendments thereto, submitted under the provision of the Developmental Disabilities Program, as amended by P.L. 95-602, to the best of my knowledge and belief:

1. The state agency or agencies designated in State Plan paragraph 7.1 have authority to administer or supervise the administration of all or portions of the State Plan for which they are responsible.
2. Nothing in this State Plan is inconsistent with state law.

Name: John Ashcroft  
(State Attorney General)

Signature:  Date: 9-24-79



COUNTY CLERKS: House Bill No. 148 of the 80th General  
ELECTIONS: Assembly, which authorizes a \$3.00 charge  
by the county clerk for various services  
performed by him, does not authorize the clerk's charging for  
certain election procedures.

October 16, 1979

OPINION NO. 182

The Honorable James C. Kirkpatrick  
Secretary of State  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This opinion is in response to your question asking:

1. Are all forms or documents submitted for voter registration and voting subject to the \$3.00 charge in House Bill No. 148 [80th General Assembly], such charges being, among others, applications for voter registration by mail [§ 115.159], applications for transfer voter registration [§ 115.165], registering to vote at the county election office [§ 115.135], applications for absentee ballots [§ 115.-279], the act of voting absentee ballots at the county clerk's office [§ 115.135]?

2. Are all forms or documents necessary to file a candidacy for office or forms for establishing new parties or gaining ballot status by independent candidates subject to the \$3.00 charge found in House Bill No. 148, including declarations of candidacy [§ 115.331], and petitions for independent candidates for ballot status [§ 115.331]?

House Bill No. 148 of the First Regular Session of the 80th General Assembly, among other things, repealed § 51.410, RSMo, and enacted in lieu thereof a new section, with the same number, effective September 28, 1979, providing as follows:

The Honorable James C. Kirkpatrick

The county clerk shall charge a fee of three dollars for each certificate, bond, filing, petition, license, order, recording, or other document, writing, or transaction handled in accordance with the duties of the office of county clerk. The clerk shall pay into the treasury of the county any and all fees collected under the provisions of this section.

Repealed section 51.410 specified over fifty instances in which county clerks were allowed fees for their services.

We note, however, that none of the specific items provided for in repealed § 51.410 authorized a charge for any of the services enumerated in your question, with the possible exception of the charge for oaths and certificates to affidavits. It is our understanding of past practice that none of such services relative to elections were considered services for which a fee was authorized under repealed § 51.410.

It is also our understanding that Chapter 115, RSMo, the Comprehensive Election Act of 1977, purports to comprehensively cover laws relative to elections and election procedures.

In our statement of your question, we have placed the sections of the Comprehensive Election Law relative to your question in brackets. It is important to note that the Comprehensive Election Act of 1977, section 115.007, RSMo, provides:

No part of sections 115.001 to 115.641 and sections 51.450 and 51.460, RSMo, shall be construed as impliedly amended or repealed by subsequent legislation if such construction can be reasonably avoided.

In a note to § 115.007, the Missouri Revisor of Statutes has said that §§ 51.450 and 51.460 were added late in passage and were probably not intended to be considered a part of "this act" within the language of House Bill No. 101, as enacted in 1977, effective January 1, 1978.

If in fact we were to conclude that the county clerk is to charge for the election services which you enumerate, numerous constitutional issues would be raised. And, clearly inequities would exist because in some areas, under the Comprehensive Election Act of 1977, the county clerk does not perform all of the

The Honorable James C. Kirkpatrick

services you describe. However, in view of the conclusion that we reach we do not deem it necessary to consider the constitutional questions that might be raised by a holding that the clerks collect for such services.

It is our view that § 51.410, as amended by House Bill No. 148, does not require or authorize the charging of the \$3.00 fee for the services you describe. Inasmuch as the voting procedures you enumerate are comprehensively covered under Chapter 115, it is our view that if the legislature intended a charge for such services, such intent would have been clearly expressed. We do not believe that the provisions of Chapter 115 with respect to such voting procedures can be impliedly amended by such amendments to § 51.410 without conflicting with the provisions of § 115.007.

#### CONCLUSION

It is the opinion of this office that House Bill No. 148 of the 80th General Assembly, which authorizes a \$3.00 charge by the county clerk for various services performed by him, does not authorize the clerk's charging for certain election procedures.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

JOHN ASHCROFT  
Attorney General

COUNTY CLERK: House Bill No. 148 of the 80th General Assembly,  
FEES: which authorizes a three dollar charge by the  
ELECTIONS: county clerk for various services performed by  
him does not authorize the clerk to charge for  
filing certain reports or statements required  
to be filed with his office under the Campaign  
Finance Disclosure Law, Chapter 130, RSMo 1978, as amended by  
Senate Bill No. 129, 80th General Assembly.

November 20, 1979

OPINION NO. 183

The Honorable James C. Kirkpatrick  
Secretary of State  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This opinion is in response to your question asking:

Is the county clerk required under House Bill No. 148 of the 80th General Assembly to collect the fees set out therein for each report or statement required to be filed with his office under Chapter 130, RSMo 1978, and also asking whether the county clerk can refuse to accept reports or statements required by Chapter 130 if the \$3.00 fee is not paid?

House Bill No. 148 of the First Regular Session, 80th General Assembly, among other things, repealed § 51.410, RSMo, and enacted in lieu thereof a new section with the same number effective September 28, 1979, providing as follows:

The county clerk shall charge a fee of three dollars for each certificate, bond, filing, petition, license, order, recording, or other document, writing, or transaction handled in accordance with the duties of the office of county clerk. The clerk shall pay into the treasury of the county any and all fees collected under the provisions of this section.

The Honorable James C. Kirkpatrick

In our Opinion No. 182 dated October 16, 1979, addressed to you, copy enclosed, this office concluded that House Bill No. 148 of the 80th General Assembly, which authorizes a three dollar charge by the county clerk for various services performed by him, does not authorize the clerk's charging for certain election procedures.

It is our view that the reasoning in that opinion is generally applicable here.

For the sake of clarity, we point out that many of the sections in Chapter 130 with respect to campaign finance disclosures were amended by Senate Bill No. 129 of the 80th General Assembly effective September 28, 1979. Although we do not deem the amendments made by Senate Bill No. 129 germane to your question, it is noteworthy that such amendments took place at the same time as the amendments to § 51.410 and became effective at the same time.

For the purposes of this opinion we will not distinguish between the amendments made by Senate Bill No. 129 and the other portions of Chapter 130, which were not affected by Senate Bill No. 129.

Generally speaking, the reports and disclosures which you refer to are required to be filed with the "appropriate officer" or "appropriate officers," which terms are defined by subsection (1) of § 130.011 as the person or persons designated in § 130.026 to receive certain required statements and reports. Under § 130.026, it is clear that the county clerk is not always the appropriate authority designated to receive such reports. This means, of course, that, depending on the circumstances, it is possible that the reports may be filed with other designated officers. This would clearly lead to certain inequities which would be similar to the inequities we believed might exist, in our analysis of the question presented in Opinion No. 182, if the county clerk charged for such filing.

Chapter 130 with respect to the Campaign Finance Disclosure Law does not contain the strong legislative directive with respect to the interpretation of other apparently conflicting legislation, which we found in Chapter 115, RSMo. However, it is our view that the assessment of charges for the filing of reports required

The Honorable James C. Kirkpatrick

under Chapter 130 would materially affect the implementation of that law. Further, since subsection 2(2) of § 130.056 requires that the "appropriate officer" "[a]ccept reports and statements required to be filed with his office" and perform other duties with respect to such reports and statements it seems apparent that the legislature did not intend that the clerk exact a charge for such filing.

#### CONCLUSION

It is the opinion of this office that House Bill No. 148 of the 80th General Assembly, which authorizes a three dollar charge by the county clerk for various services performed by him, does not authorize the clerk to charge for filing certain reports or statements required to be filed with his office under the Campaign Finance Disclosure Law, Chapter 130, RSMo 1978, as amended by Senate Bill No. 129, 80th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

Enclosure:

Att'y Gen. Op. No. 182,  
Kirkpatrick, Oct. 16, 1979

*Attorney General of Missouri*

JEFFERSON CITY

JOHN ASHCROFT  
ATTORNEY GENERAL

65102

(314) 751-3321

December 5, 1979

OPINION LETTER NO. 195

The Honorable Leary G. Skinner  
County Counselor  
Clay County  
17 West Kansas Street  
Liberty, Missouri 64068

Dear Mr. Skinner:

This letter is in response to your request for an opinion of this office asking:

1) May Clay County, Missouri, a first class county without a Charter, adopt the Uniform Fire Code as published by the International Conference of Building Officials and the Western Fire Chiefs Association?

2) If the Uniform Fire Code may not be adopted in its entirety, what portions may Clay County lawfully adopt and enforce?

You have advised us that the Uniform Fire Code, to which you refer, was incorporated by reference in the county court's order purporting to adopt the Code. It is our belief that such an incorporation was improper for the reasons expressed in Att'y Gen. Op. No. 190 to Cantrell dated April 25, 1962, copy enclosed.

Section 64.170, RSMo, to which you refer in the memorandum which you submitted provides:

For the purpose of promoting the public safety, health and general welfare, to protect life and property and to prevent the construction of fire hazardous buildings, the county court



The Honorable Leary G. Skinner

in all counties of the first and second class, as provided by law, is for this purpose empowered to adopt by order or ordinance regulations to control the construction, reconstruction, alteration or repair of any building or structure and any electrical wiring or electrical installation therein, and provide for the issuance of building permits and adopt regulations licensing persons, firms or corporations other than federal, state or local governments, public utilities and their contractors engaged in the business of electrical wiring or installations and provide for the inspection thereof and establish a schedule of permit, license and inspection fees and appoint a building commission to prepare the regulations, as herein provided.

Under this section the county court is empowered to adopt by ordinance regulations to control the construction, reconstruction, alteration or repair of any building or structure and any electrical wiring or electrical installation therein, and provide for the issuance of building permits. It is settled law that a county court is invested with such powers only with reference to the management of the affairs of the property and business of the county as are expressly conferred on it by statute and such as may be fairly implied from those expressly granted. Walker v. Linn County, 72 Mo. 650 (1880).

We note that the Uniform Fire Code goes well beyond the scope of the powers granted the county court under § 64.170. Therefore, it is our view that the county court does not have the authority to adopt the Uniform Fire Code in its entirety.

We are of the view that the county court may adopt certain portions of the Uniform Fire Code, which pertain to the construction, reconstruction, alteration or repair of buildings and electrical wiring or electrical installation therein, by setting out the portions to be adopted at length in the ordinance.

We believe that this answers your questions.

Very truly yours,



JOHN ASHCROFT  
Attorney General

Enclosure - Att'y Gen.  
Op. No. 190, Cantrell,  
4/25/1962



December 4, 1979

OPINION LETTER NO. 201  
(Answer by Letter - Klaffenbach)

The Honorable James C. Kirkpatrick  
Secretary of State  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This letter is in response to your request for an opinion asking:

Is the Kansas City Board of Police Commissioners a state agency under Section 536.010 (5) RSMo? Should the Board submit, and this office publish in the Missouri Register, proposed rules and orders of rule-making under Section 536.021 RSMo?

You further state that your question concerns rules promulgated pursuant to Section 84.720, RSMo, under which the Board of Police Commissioners has the power to license and regulate private watchmen, private detectives, and private policemen.

Inasmuch as your question requires an expedited decision from this office, we will omit unnecessary detail.

A "state agency" is defined in Section 536.010(5), RSMo, thusly:

'State Agency' means each board, commission, department, officer or other administrative office or unit

The Honorable James C. Kirkpatrick

of the state other than the general assembly, the courts, the governor, or a political subdivision of the state, existing under the constitution or statute, and authorized by the constitution or statute to make rules or to adjudicate contested cases.

It is our view that the Kansas City Board of Police Commissioners is a state agency generally, because the Missouri Supreme Court concluded in ABC Security Service, Inc. v. Miller, 514 S.W.2d 521, 526 (Mo. 1974), that the St. Louis Board of Police Commissioners is a state agency. It is clear that this holding would apply to the Kansas City Board of Police Commissioners, as well as the St. Louis Board of Police Commissioners. Further, it is a "state agency" because it is authorized to make rules as defined in Section 536.010(4), RSMo. It is clear, of course, that some of the rules promulgated by the Board do not come within the definition of "rule" under Section 536.010(4). McCallister v. Priest, 422 S.W.2d 650, 659 (Mo. 1968). However, rules respecting the licensing of private watchmen, private detectives, and private policemen under Section 84.720 come within the definition of "rule" under Section 536.010(4).

Very truly yours,

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

JOHN ASHCROFT  
ATTORNEY GENERAL

65102

December 10, 1979

(314) 751-3321

OPINION LETTER NO. 202

The Honorable Daniel M. Buescher  
Prosecuting Attorney  
Franklin County  
414 East Main Street  
Union, Missouri 63084

Dear Mr. Buescher:

This letter is in response to your request for an opinion of this office asking as follows:

1. Can a county of the second class enact and administer a zoning ordinance that would selectively single out particular areas that would desire zoning and allow other areas to remain unzoned?
2. Can a county of the second class enact and administer a zoning ordinance that would be more restrictive in selective areas and allow other areas to have a very minimum of restrictions on the use of land?

You also state:

The voters of Franklin County, a county of the second class, approved the establishment of county Planning and Zoning in 1966 or 1967. Shortly thereafter, a set of Planning regulations and subdivision regulations was enacted and adopted by the County Court. To date, no zoning ordinance has been adopted by the County Court in spite of the authorization provided by the earlier election. That [sic] rate of growth in Franklin County has now made it necessary that in order to promote the orderly development of a rapidly growing county, a zoning ordinance is necessary. There are a number of people in the county, however, who are very much opposed to county zoning.

The Honorable Daniel M. Buescher

You also advise us that county planning and zoning was approved by the voters of Franklin County in an election conducted pursuant to § 64.885, RSMo.

Section 64.885 provides:

1. The county court of any county of the first class not having a charter form of government, or of any county of the second, third or fourth class may make an order to present to the voters of the county the question for the establishment of county planning and zoning as provided in sections 64.800 to 64.840 and 64.845 and 64.880.

2. The question shall be submitted in substantially the following form:

Shall county planning and zoning be adopted?

3. If a majority of the votes cast is in favor of county planning and zoning, the county court shall proceed with a program of county planning and zoning as provided in sections 64.800 to 64.840 and 64.845 to 64.880.

Sections 64.845 to 64.880, RSMo, which are referred to in § 64.885, refer to county zoning.

Specifically § 64.845 provides:

1. The county court of any county of the first class not having a charter form of government, or of any county of the second, third or fourth class may make an order to present to the voters of the county the question for the establishment of county zoning as provided in sections 64.845 to 64.880.

2. The question shall be submitted in substantially the following form:

Shall county zoning be adopted?

The Honorable Daniel M. Buescher

3. If a majority of the votes cast is in favor of county zoning, the county court shall proceed with a program of county zoning as provided in sections 64.845 to 64.880.

Section 64.850 provides:

For the purpose of promoting health, safety, morals, comfort or the general welfare of the unincorporated portion of counties of the first class not having a charter form of government, or of counties of the second, third or fourth class to conserve and protect property and building values, to secure the most economical use of the land, and to facilitate the adequate provision of public improvements all in accordance with a comprehensive plan, the county court of any county of the first class not having a charter form of government, or of any county of the second, third or fourth class may, after approval by vote of the people as provided in section 64.845, regulate and restrict, by order of record, in the unincorporated portions of the county, the height, number of stories, and size of buildings, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land for trade, industry, residence or other purposes.

Section 64.855 provides:

For any or all of the purposes of section 64.850, the unincorporated territory may be divided into districts of such number, shape and area as may be deemed best suited to carry out the purpose of sections 64.845 to 64.880 and shall be shown upon the county court's zoning plan; and within the districts the erection, construction,

The Honorable Daniel M. Buescher

reconstruction, alteration, repair, relocation or maintenance of buildings or structures and use of land and lots may be regulated and restricted. All the regulations shall be uniform for each class or kind of buildings or land uses throughout each district, but the regulations in one district may differ from those in other districts. The regulations shall be made in accordance with a comprehensive zoning plan, and shall give reasonable consideration, among other things, to the then existing character of the districts, their suitability for particular uses, conservation of the value of buildings and of existing development, and encouragement of the most appropriate use of land throughout the county.

It has been held that under these sections with respect to county zoning, the county court has no power to impose zoning regulations upon territory within the corporate limits of a town even though the town had not adopted a city plan. County of Platte v. James, 489 S.W.2d 216 (Mo. 1973).

It seems clear from the sections we have quoted with respect to county zoning that the county government of such counties may, after the approval of the voters, regulate and restrict as prescribed in § 64.850, among other things, the use of buildings, structures and lands for trade, industry, residence or other purposes. Likewise, it is clear from § 64.855 that the unincorporated territory may be divided into districts, as necessary, and within the districts the erection, construction, reconstruction, alteration, repair, relocation or maintenance of buildings or structures and use of land and lots may be regulated and restricted. Further, it is clear from § 64.855 that the regulations are required to be uniform for each class or kind of buildings or land uses throughout each district but the regulations in one district may differ from those in other districts but shall be made in accordance with a comprehensive zoning plan and shall give reasonable consideration, among other things, to the then existing character of the districts, their suitability for particular uses, conservation of the value of buildings and of existing development, and encouragement of the most appropriate use of land throughout the county.

The Honorable Daniel M. Buescher

Likewise, it is clear that under § 64.860, the county court is required to provide for the manner in which the regulations, restrictions and boundaries of the districts shall be determined, established and enforced, and from time to time amend, supplement or change such regulations and restrictions within the unincorporated territory.

The provisions of §§ 64.845, et seq., give the county court considerable latitude in determining the regulations and restrictions and the required districts. However, it seems obvious that these provisions relative to county zoning envision a comprehensive plan with regulations which are uniform for each class or kind of building or land uses throughout each district, but which regulations in one district may differ from those in other districts.

In light of the quoted provisions, we conclude that the zoning regulations may differ considerably from district to district. Since the legislature has not prescribed particular zoning classifications and in fact has given the county the latitude we noted, we believe that the county may adopt whatever regulations and restrictions the county believes to be consistent with overall county zoning consistent with the provisions quoted. It would not be consistent with such provisions to entirely ignore some areas of the county or to disregard the comprehensive zoning plan. We believe that a court of law would approve reasonable distinctions in regulations and restrictions based upon the comprehensive zoning plan but not distinctions based upon the mere fact that some land owners are opposed to county zoning.

We believe this answers both of the questions you have asked.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

65102

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

December 5, 1979

OPINION LETTER NO. 205

Dr. Arthur L. Mallory, Commissioner  
Department of Elementary and  
Secondary Education  
6th Floor, Jefferson State Office Building  
Jefferson City, Missouri 65101



Dear Dr. Mallory:

This letter is in response to your request for our review and certification of the Department of Elementary and Secondary Education's 1980 State Plan under the Community Education and Comprehensive Education Act of 1978.

Our review has taken into consideration the Community Education and Comprehensive Education Act of 1978, P. L. 95-561, 20 U.S.C. § 3281; the federal regulations applicable to such act; Art. III, § 38(a), Art. IV, § 15, and Art. IX, §§ 1(b), 2(a), and 2(b), Mo. Constitution (1945); §§ 162.092, 171.091, 171.096, and 178.430, RSMo 1978, and related provisions of state law.

Based on this review, it is the opinion of this office that:

1. The Department of Elementary and Secondary Education is the state agency primarily responsible for the supervision of public elementary and secondary schools in the state of Missouri and is, therefore, the "state educational agency" as defined by federal law.
2. The Department of Elementary and Secondary Education has the authority under state law to perform the functions of the state educational agency under federal law.
3. The state may legally carry out each provision of the 1980 Fiscal Year State Plan.



Dr. Arthur L. Mallory

4. All of the provisions of the foregoing State Plan are consistent with state law.

5. The State Treasurer has authority under state law to receive, hold, and disburse federal funds under the Plan.

6. The Missouri Commissioner of Education has authority to submit the Plan.

7. The State Board of Education, which appoints and directs the activities of the Commissioner of Education and the Department of Elementary and Secondary Education, has formally approved the Plan.

8. The Plan, in conjunction with applicable state statutes, is the basis for state operation and administration of the federal program.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

65102

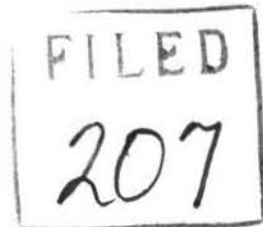
(314) 751-3321

JOHN ASHCROFT  
ATTORNEY GENERAL

December 31, 1979

OPINION LETTER NO. 207

The Honorable Edwin L. Dirck  
Senator, 24th District  
State Capitol  
Room 420  
Jefferson City, Missouri 65101



Dear Senator Dirck:

This letter is in response to your questions asking as follows:

"How are programs which were formerly administered by the department of transportation prior to January 1, 1980, to be funded upon the merger of the transportation department with the highway department on that date? Can constitutionally earmarked funds accruing to the new department of highways and transportation be utilized for the administration of these programs? What happens to the appropriations made to the department of transportation for these programs for the fiscal year ending July 1, 1980, when the department of transportation is absorbed by the new department on January 1, 1980?

Your question arises because of the adoption by the voters of the constitutional amendment which is technically known as Senate Substitute for House Committee Substitute for House Joint Resolutions Numbers 39, 40, 44 and 48, 80th General Assembly. The amendment expressly provides that it shall become effective January 1, 1980.

Such amendment by repeal abolished the former Department of Highways and the Department of Transportation and, essentially, merged them into a new Department of Highways and Transportation without the necessity of statutory implementation.

Section 29 of Article IV now provides:

"The Department of Highways and Transportation shall be in charge of a highways and transportation commission. The number, qualifications, compensation and terms of the members of the Highways and Transportation Commission shall be fixed by law, and not more than one-half of its members shall be of the same political party. The selection and removal of all employees shall be without regard to political affiliation. The Highways and Transportation Commission shall have authority over all state transportation programs and facilities as provided by law, including, but not limited to, bridges, highways, aviation, railroads, mass transportation, ports, and waterborne commerce, and shall have authority to limit access to, from and across state highways where the public interest and safety may require. The present members of the Highway Commission shall serve as members of the Highways and Transportation Commission for the remainder of the terms for which they were appointed. All references to the Highway Commission and the Department of Highways in this constitution and in the statutes shall mean the Highways and Transportation Commission and the Department of Highways and Transportation."

Section 30(c) of Article IV provides:

"The Highways and Transportation Commission shall have authority to locate, relocate, establish, acquire, construct, maintain, control, and as provided by law to operate, develop or fund public facilities as part of any state transportation program such as but not limited to aviation, mass transportation, railroads, ports, and waterborne commerce, provided that funds other than those designated for highway purposes in this constitution are made available for such purposes."

Section 33 of Article IV provides:

"Any transfer of employees made pursuant to the provisions of this article shall not affect or abridge any rights or benefits accrued under any

retirement system in which such employees are members on the effective date of this article, and the employees may continue coverage under such retirement system until otherwise provided by law."

It seems clear from the above that the Department of Transportation and the Commission of the Department of Transportation were abolished by this constitutional amendment and, therefore, the office of the Director of the Department of Transportation was abolished. However, the present members of the Highway Commission are to serve as members of the Highways and Transportation Commission for the remainder of their terms. All references to the Highway Commission and the Department of Highways in the constitution and in the statutes mean the Highways and Transportation Commission and the Department of Highways and Transportation. Although the amendment does not give us any direction with respect to employees of either department, except for the provision relating to retirement benefits, it seems that the new Commission of Highways and Transportation will have the authority to determine which employees of the prior departments will be employees of the new Department of Highways and Transportation, within the framework of applicable law.

With respect to your question concerning the use of existing appropriations for programs of the Department of Transportation, which are, as of January 1, 1980, under the Highways and Transportation Department, we note that the provisions we have quoted provide that the Highways and Transportation Commission shall have authority over all state transportation programs and facilities as provided by law, including, but not limited to, bridges, highways, aviation, railroads, mass transportation, ports, and waterborne commerce. We believe that it follows from this grant of authority that it was intended that the present program appropriations of the former Department of Transportation may be used by the new Commission to carry out such programs as are within the grant of authority to the Commission in accordance with the purpose of such appropriations.

With respect to your question concerning the use of constitutionally earmarked funds by the new Department of Highways and Transportation for the administration of Transportation programs, we note that Subsection 2, Section 30(b), Article IV, provides:

"One-half of the proceeds from the state sales tax on all motor vehicles, trailers, motorcycles, mopeds and motortricycles shall be dedicated for highway and transportation use and shall be distributed as follows: ten percent to the counties, fifteen percent to the cities, one percent to the state transportation fund, which is hereby created to be used in a manner provided by law and

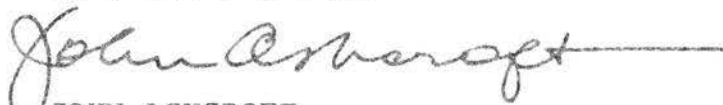
Honorable Edwin L. Dirck

seventy-four percent to the state road fund. The amounts distributed shall be allocated as provided in section 30(a) of this article, to be used for highway and transportation purposes."

We believe that the constitution is clear in its allocation of only one percent (1 %) to the transportation fund of the proceeds collected pursuant to Subsection 2, Section 30(b), Article IV, of the Constitution to be used in a manner provided by law. Clearly, funds which are earmarked for one purpose may not be used for any other purpose.

We are aware that the complexity of the new constitutional provisions may require a further response on our part to questions concerning the implementation of such provisions. In view of the time element presently involved, we have undertaken in this letter to be as concise and expeditious as possible, with a view to answering any further appropriate questions as may be necessary upon the receipt of such questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

JOHN ASHCROFT  
ATTORNEY GENERAL

65102

(314) 751-3321

December 7, 1979

OPINION LETTER NO. 208

The Honorable Patrick Dougherty  
Representative, 98th District  
4031 Parker Avenue  
St. Louis, Missouri 63116

Dear Mr. Dougherty:

This is in answer to your recent opinion request in which you asked as to the filing for the position of committeeman or committeewoman of St. Louis City when the party political committee treasurer is absent from the city for an extended period of time or when the office of treasurer is vacant.

Section 115.611, RSMo, provides in part as follows:

2. Before filing his declaration of candidacy, candidates for county committeeman or county committeewoman shall pay to the treasurer of his party's county committee, or submit to the county election authority to be forwarded to the treasurer of his party's committee, a certain sum of money, as follows:

. . . . .

(2) One hundred dollars if he is a candidate for county committeeman or committeewoman in any city not situated in a county;

It can be seen from the quoted provision of § 115.611 that declarations of candidacy for committeeman or committeewoman are filed with the election authority and that before filing his declaration with the election authority, the candidate can either pay to the treasurer of his party's county committee the required fee or submit to the county election

The Honorable Patrick Dougherty


authority to be forwarded to the treasurer of his party's committee the required sum.

Section 115.015, RSMo, provides as follows:

The county clerk shall be the election authority, except that in a city or county having a board of election commissioners, the board of election commissioners shall be the election authority.

It is apparent from the provisions of § 115.015 that in St. Louis City the election authority is the Board of Election Commissioners. Therefore, in St. Louis City a person wishing to file as a candidate for committeeman or committeewoman files such declaration with the Board of Election Commissioners and such candidate can either pay to the treasurer of his party's county committee or submit to the county election authority to be forwarded to the treasurer of his party's committee the statutory sum required.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", followed by a horizontal line.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

65102

(314) 751-3321

JOHN ASHCROFT  
ATTORNEY GENERAL

December 18, 1979

OPINION LETTER NO. 213

The Honorable Gary E. Stevenson  
Prosecuting Attorney  
St. Francois County  
3rd Floor, Courthouse  
Farmington, Missouri 63640

Dear Mr. Stevenson:

This letter is in response to your question asking:

If the County Auditor of a Second Class  
County does not approve a bill or a  
claim against the County, can the County  
Court still pay said bill?

If the County Court cannot pay said bill,  
is mandamus the only remedy that the Court  
would have to make the Auditor approve a  
bill that the County Court thinks is legally  
binding?

You also state:

In the past years the County Court has  
on numerous occasions wanted to pay bills  
that the County Auditor did not approve  
but which the County Court believed were  
legal and for which payment had been  
stopped by the non-approval of the County  
Auditor.

It is our view that Att'y Gen. Op. No. 95, Sheehan,  
May 14, 1968, is applicable. You have a copy of that opinion,  
and we have not enclosed it.



The Honorable Gary E. Stevenson

Thus, the answer to your first question is that if the county auditor of a second class county does not approve a bill or a claim against the county, the county court does not have the authority to pay such bill or claim.

Your second question asks whether mandamus is the only remedy that the county court would have against the auditor for not approving a bill that the county court thinks is legally binding. Although it appears that mandamus would generally be an appropriate remedy in such a case, it is also clear that mandamus is not a writ of right and its issuance lies in the sound discretion of the court.

For the general principles involved, see Mandamus, Missouri Appellate Practice and Extraordinary Remedies, 2nd Ed.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

COUNTY COLLECTORS:

A county collector is required to pay into the county treasury the fees received by him under §§ 139.090 and 150.150, as amended by House Bill No. 148, 80th General Assembly, respecting the collection of a one dollar fee for duplicate personal property tax receipts issued by him and a five dollar fee for the issuance of certain vendors' licenses.

December 17, 1979

OPINION NO. 214

The Honorable John Dennis  
Senator, 27th District  
Benton, Missouri 63736

Dear Senator Dennis:

This opinion is in answer to your questions asking:

House Bill 148, Truly Agreed and Finally Passed by the First Session of the 80th General Assembly, provides for a fee of \$1.00 to be collected for duplicate personal tax receipts issued by the county collectors (139.090, RSMo), and Section 150.150 as amended by House Bill 148 raises the fee for issuing the merchants', manufacturers', itinerant vendors' and peddlers' license.

Are county collectors entitled to fees under these sections.

Section 139.090, as amended by House Bill No. 148, 80th General Assembly, provides in pertinent part:

. . . The collector shall charge a fee of one dollar for any duplicate personal tax receipt issued by him.

Section 150.150, as amended by House Bill No. 148, 80th General Assembly, provides:

The collector shall, at the time of delivering such license, collect the sum of five dollars, the fee herein allowed to the clerk for issuing the same; provided, that any fees herein received by the collector shall be paid into the county or city treasury, as provided by law.

The Honorable John Dennis

It is clear that § 150.150, by its own terms, requires that the fee be paid into the county treasury.

While there is no express provision in amended § 139.090 requiring the collector to pay the fee into the county treasury, we believe that it is his duty to do so.

It has been said that it is a well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed. Ward v. Christian County, 111 S.W.2d 182, 183 (Mo. 1937).

In view of the conclusion that we reach, we do not believe it is necessary to determine whether or not any such increase, if it were an increase in such officers' compensation, would be in violation of § 13 of Art. VII, Missouri Constitution, which generally prohibits an increase in an officer's compensation during his term.

#### CONCLUSION

A county collector is required to pay into the county treasury the fees received by him under §§ 139.090 and 150.150, as amended by House Bill No. 148, 80th General Assembly, respecting the collection of a one dollar fee for duplicate personal property tax receipts issued by him and a five dollar fee for the issuance of certain vendors' licenses.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, reading "John Ashcroft". The signature is written in dark ink and is positioned above the printed name and title.

JOHN ASHCROFT  
Attorney General

*Attorney General of Missouri*

JEFFERSON CITY

65102

JOHN ASHCROFT  
ATTORNEY GENERAL

(314) 751-3321

December 20, 1979

OPINION LETTER NO. 221

The Honorable Abe R. Paul  
Prosecuting Attorney  
McDonald County  
Post Office Box 367  
Pineville, Missouri 64856

Dear Mr. Paul:

This is in response to your opinion request  
of recent date concerning county collectors.

I am enclosing a copy of Opinion No. 214,  
rendered December 17, 1979, to the Honorable  
John Dennis, which answers the question contained  
in your recent opinion request.

Very truly yours,

A handwritten signature in dark ink, reading "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT  
Attorney General

Enclosure  
Att'y Gen. Op. No. 214  
Dennis, 12/17/79